

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ETHAN HOGGATT, et al., *Petitioners*

v.

ALLSTATE INSURANCE, et al., *Respondents*

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioners, the Hoggatts, filed criminal fraud charges with the Mississippi Attorney General against Allstate a month prior to filing of this civil action. They later amended their criminal affidavit during the lawsuit, and filed a *Motion to Amend* their civil complaint. The District Court sanctioned and fined the Hoggatts for filing their amended criminal affidavit with the Mississippi Attorney General and Mississippi Insurance Department, and for filing their *Motion to Amend*, and additionally sanctioned and fined the Hoggatts for attempting Interlocutory Appeal. The Hoggatts Amended Complaint asserted Allstate's Negligence per Se liability, due to Allstate's numerous violations of state and federal law, pre and post filing.

The District Court ordered additional fines against the Hoggatt for filing a Rule 60 motion, post dismissal, and directed additional attorneys' fees, and additional attorneys' fees paid to Allstate for preparing a Motion for Contempt.

FEDERAL ISSUE OF FIRST IMPRESSION

Do Petitioners have an absolute right under the Fair Credit Reporting Act and Mississippi's *Unfair and Deceptive Trade Practices Act* to have the reports upon which their insurance was cancelled?

FIRST AMENDMENT QUESTIONS

Does the 1st Amendment's guarantee of the right to petition the government mean that a federal district court may not punish, fine, and hold in contempt of court an attorney or civil litigant, for filing an amended criminal affidavit, with the FTC, the Mississippi Insurance Department, and to the Mississippi Attorney General's Office for conduct that Allstate committed after initiation of this civil action, even if the alleged criminal conspirators include Allstate attorneys?

Do the Hoggatts have a right, under the Fair Credit Reporting Act and the First Amendment, to report Allstate's intentionally fraudulent and retaliatory "*Notice of Non-Renewal*" directed to Dr. and Mrs. Hoggatt?

ABUSE OF DISCRETION

Did the district court abuse its discretion when denying the Hoggatts' *Motion to Amend* with additional parties and tort claims, including, but not limited to, negligence per se claims for Allstate's documented conspiracy to act in concert to commit many documented crimes, i.e., fraud, wire fraud, mail fraud, witness retaliation, witness intimidation, civil rights violations, and for destruction of evidence to impair its use in an official proceeding, committed post-filing?

ii.

List of Parties

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition for a writ of certiorari is as follows:

Petitioners Ethan Hoggatt, Eric Hoggatt, DDS, and Plaintiffs 3-29, who were Allstate Insureds sold similar bogus “Dummy” insurance policies, were Plaintiffs in the district court below, and are Petitioners in this petition for a writ of certiorari.

Defendants in the case below were Allstate Casualty and Insurance Company, Allstate agent Andy Dyson, and Suzanne Hand, an employee of Allstate agent Andy Dyson’s agency.

Petitioners sought to amend their complaint to add the president of Allstate Casualty and Insurance who signed Ethan Hoggatt’s void-at-inception ‘policy’, Cory Radicioni, Charles Cowan, Wise Carter Child & Caraway P.A. law firm, and Allstate Customer Resolution Specialist “Jennifer”, identifiable as CRS349, Allstate Customer Resolution Specialist, Phone (800)995-2566, Email CRS349@Allstate.com, as parties defendant for fraudulent and tortuous conduct committed after the filing of this civil action.

Attorney Danielle Love Burks has interest in this petition; the district court awarded to her attorney’s fees, as counsel for Allstate, though she was not an attorney of record. She will be affected if the sanctions issued by the district court are eventually overturned.

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- **Because Allstate insurance never had a contract of insurance**

with Ethan Hoggatt. The district court erred in dismissal for failure to state a claim in common law fraud, civil RICO, and common law contract.

The Hoggatts’ negligence per se claims, due to Respondents’ criminal acts are valid, strong, and well documented. Allstate’s criminal acts are currently under investigation by the Mississippi Attorney General’s office.

- **Because both the Federal Trade Commission and the Mississippi Attorney General are statutorily designated FCRA enforcement agencies;** the Hoggatts' filing a complaint alleging criminal acts, including use of the mails to intentionally commit FCRA violations, was both proper and constitutionally protected.

Because a policyholder has a right to file a written complaint against an insurance company with the Mississippi Department of Insurance.

Because Petitioners Amended complaint validly asserted Negligence per Se for Allstate's criminal acts; Allstate's tortuous acts committed after this lawsuit was instigated should be fair game for civil action.

Because the district court opinion has the aim and effect of chilling a victim's First Amendment rights.

Because the district court's civil contempt sanctions constitute an unwarranted, damaging, and widely published public reprimand.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Ethan Hoggatt, Dr. Eric Hoggatt, and Plaintiffs 3-29, who are Allstate Insureds sold similar bogus “Dummy” insurance policies, petition for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Fifth Circuit in No. 20-60783.

OPINIONS BELOW

U. S. Court of Appeals for the Fifth Circuit *Hoggatt, et al, v. Allstate Ins, et al*, No. 20-60783, rendered February 9, 2021 is not published, and is reproduced at Pet. App. 1a.

United States District Court for the Northern District of Mississippi *Ethan Hoggatt, et al v. Allstate, et al*, No. 1:19-cv-14 rendered on November 23, 2020, Order holding Petitioners and their counsel in contempt, is published at 502 F.Supp.3d 1110 (2020) [ND Miss 2020]), and is reproduced at Pet. App. 7a.

United States District Court for the Northern District of Mississippi *Ethan Hoggatt, et al v. Allstate, et al*, No. 1:19-cv-00014 Order Denying Rule 60 Motion for Relief from Judgment, Denying Motion for Stay of Sanctions, Granting Motion for Contempt, October 7, 2020, is not published and is reproduced at Pet. App. 15a.

U. S. District Court for the Northern District of Mississippi opinion dismissing with prejudice *Ethan Hoggatt, et al v. Allstate, et al*, No. 1:19-cv-00014, July 23, 2020 is not published, and is reproduced at Pet. App. 30a.

U. S. District Court for the Northern District of Mississippi opinion, *Ethan Hoggatt, et al v. Allstate, et al*, No. 1:19-cv-00014, Order denying Plaintiffs’ motion for certificate of appealability and motion to appeal the Magistrate Judge’s decision July 23, 2020, is not published and is reproduced at Pet. App. 39.

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U. S. District Court for the Northern District of Mississippi, *Ethan Hoggatt, et al v. Allstate, et al*, No. 1:19-cv-00014, Order Granting in Part and Denying in Part Motion for Sanctions; Granting Motion for Protective Order; Finding as moot Motion to file; Denying Motion to Amend or Correct rendered on August 18, 2019 is reproduced at Pet. App. 50.

U. S. District Court for the Northern District of Mississippi, *Ethan Hoggatt, et al v. Allstate, et al*, No. 1:19-cv-00014, Order Denying Hoggatts' Motion to Stay rendered on September 20, 2019 is reproduced at Pet. App. 49.

U. S. District Court for the Northern District of Mississippi, *Ethan Hoggatt, et al v. Allstate, et al*, No. 1:19-cv-00014, Order Denying Hoggatts' Motion to Remand to State Court rendered on March 13, 2019 is reproduced at Pet. App. 61.

JURISDICTION

The date on which the United States Court of Appeals for the Fifth Circuit decided this case was February 9, 2021. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Congress shall make no law respecting an establishment of religion, or m prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. U.S. Const. amend. I
18 U.S. Code § 1341 - Frauds and swindles, in relevant part, states, Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations...for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any

private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to...or affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

18 U.S. Code § 1343 - Fraud by wire, in relevant part, states,

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation...affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

18 U.S. Code § 1344 - Bank fraud, in relevant part, states,

Whoever knowingly executes, or attempts to execute, a scheme or artifice—...
(2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises; shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

18 U.S. Code § 1513 - Retaliating against a witness, victim, or an informant, in relevant part, states,

(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.

(f) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

(g) A prosecution under this section may be brought in the district in which the official proceeding (whether pending, about to be instituted, or completed) was intended to be affected, or in which the conduct constituting the alleged offense occurred.

18 U.S.C. § 1519, SOX (Sarbanes-Oxley Act) Destruction, alteration, or falsification of records in Federal investigations and bankruptcy

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

15 U.S.C. § 1681s § 621. Administrative enforcement, in relevant part, states,

a (1) Enforcement by Federal Trade Commission

The Federal Trade Commission shall be authorized to enforce compliance with the requirements imposed by this subchapter...[Fair Credit Reporting Act]...

(c) STATE ACTION FOR VIOLATIONS

(1) AUTHORITY OF STATES In addition to such other remedies as are provided under State law, if the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this subchapter, the State—

(A) may bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction;

(B)subject to paragraph (5), may bring an action on behalf of the residents of the State to recover—

(i) damages for which the person is liable to such residents under sections 1681n and 1681o of this title as a result of the violation;

(ii)in the case of a violation described in any of paragraphs (1) through (3) of section 1681s–2(c) of this title, damages for which the person would, but for section 1681s–2(c) of this title, be liable to such residents as a result of the violation; or

(iii)damages of not more than \$1,000 for each willful or negligent violation; and

(C)in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

42 U.S.C. § 1985 Conspiracy to interfere with civil rights, in relevant part, states,

(2) OBSTRUCTING JUSTICE; INTIMIDATING PARTY, WITNESS, OR JUROR

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, ...or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) DEPRIVING PERSONS OF RIGHTS OR PRIVILEGES

If two or more persons in any State or Territory conspire, ... for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; ... in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

Federal Rules of Civil Procedure

Fed. R. Civ. P.16(b) SCHEDULING Pretrial Conferences; Scheduling; Management, states in relevant part,

(a) PURPOSES OF A PRETRIAL CONFERENCE. In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as:

- (1) expediting disposition of the action;
- (2) establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3) discouraging wasteful pretrial activities;
- (4) improving the quality of the trial through more thorough preparation; and
- (5) facilitating settlement.

(b) SCHEDULING.

(1) *Scheduling Order*. Except in categories of actions exempted by local rule, the district judge—or a magistrate judge when authorized by local rule—must issue a scheduling order:

- (A) after receiving the parties' report under Rule 26(f); or

(B) after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference.

(2) *Time to Issue.* The judge must issue the scheduling order as soon as practicable, but unless the judge finds good cause for delay, the judge must issue it within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared.

Local Rules

L.U.Civ.R.16. (a) PRETRIAL CONFERENCES, states in relevant part, (a) *Court Order*, The court will issue an Initial Order setting the deadline for the attorney conference required by FED. R. CIV. P. 26(f) and a date for a case management conference [CMC] with the magistrate judge. The court will strive to set the case management conference within sixty days of the filing of the first responsive pleading.

STATEMENT OF THE CASE

INTRODUCTION

1. This case, by all standards, has been bizarre.
2. Victoria Hoggatt, a sixty-nine-year-old attorney, admitted to the United States Supreme Court Bar, the Bar for the Eastern District of Texas, the United State Court of Appeals the 5th Circuit, and all federal courts in Mississippi, was first employed as an attorney by the Mississippi State Legislature in 1978.
3. She has served as a Special Prosecutor, and taught junior high, high school, and junior college, both before and after law school, and interned both as a youth court counselor, and police officer for Grenada, Mississippi.
4. Victoria Hoggatt has been married for 43 years to her husband, a 71-year-old respected dentist of “such outstanding character...high moral honesty, integrity... cooperative yet humble with others”, Dr. Edward Senior. ROA.201¹;

¹ All references are to the USCA5 electronic record on appeal in *Hoggatt v. Allstate*, No. 20-60783, unless citation is to the Appendix.

with a “reputation for high moral values, combined with a soft, steady, Southern manner” ROA.204; “Eric is friendly, quiet, dependable, and extremely easy to get along with.” Dr. Orlin Johnston, ROA.205; “a fine family man and dentist”. Dr. Keith Linn ROA.208

5. They have five children, three of whom are lawyers.
6. Mrs. Hoggatt, in behalf of her son, Ethan, and her husband, Dr. Hoggatt, sued Allstate insurance, and now all three of them have been held in contempt of court, fined and sanctioned, *owing Allstate over \$8000!*
7. In this unusual case of over two years in the District Court, with over 1500 pages and 105+ documents filed, the District Court allowed the Hoggatts no discovery at all, even though the parties’ attorneys had held the required Rule 26(f) conference on April 8, 2019, and the Hoggatts repeatedly begged for discovery to begin, ROA.1072, and filed an *Emergency Motion for Hearing* August 16, 2019 ROA.1056-1073, which emergency motion the Court denied *seven months later* March 5, 2020. ROA.1337.
8. On or about April 8, 2019 a Rule 26(f) conference was held at the helm of Allstate’s counsel Charles Cowan, where parties agreed to length and number of interrogatories, etc., and the Hoggatts believed that discovery was going to begin in good faith. Allstate counsel Charles Cowan falsely stated by telephone wire that he would send a copy of the proposed Case Management Order to the Hoggatts for their approval, but never did.

9. “In this Court’s June 27, 2019 telephone conference, it indicated it would *temporarily abstain* [emphasis added] from scheduling a Rule 16 conference in this matter until the Court given this new development.” ROA.722, footnote 7.
10. Notwithstanding the requirement of L.U.Civ.R.16. PRETRIAL CONFERENCES
- (a) *Court Order*, that
- “The court will issue an Initial Order setting the deadline for the attorney conference required by FED. R. CIV. P. 26(f) and a date for a case management conference [CMC] with the magistrate judge. The court will strive to set the case management conference within sixty days of the filing of the first responsive pleading”,
- the district court never scheduled a Rule 16 conference, and the Hoggatts never were allowed the first smidgen of discovery.
11. No discovery was allowed after the Rule 26(f) conference was held, and no hearing was ever held, on any motion. The Hoggatts never saw the District Judge, nor appeared before the Magistrate, though the District Court severely sanctioned them, over and over. Then, eventually, after Dismissal, the Hoggatts at a contempt show cause hearing before the District Court Judge, and all three Hoggatts were held in contempt of court, with severe professional and monetary (\$8085) punishments.
12. All this, even though criminal charges against Allstate and its agents based on the same acts have not been resolved, and Allstate’s bad faith insurance practices are legend. At least nine state Attorney Generals have sued Allstate for mass fraud against Allstate’s own clients.

13. On November 13, 2018, the Hoggatts filed criminal charges for mail and wire fraud with the Mississippi Attorney General's Consumer Fraud Division and the local law enforcement, *a month before any civil lawsuit was filed*.
14. The Hoggatts amended those criminal charges during this civil action as Allstate's additional criminal conduct was committed, discovered, and documented.
15. As Mrs. Hoggatt related to the District Judge at a show cause hearing November 18, 2020, both the local District Attorney and the Mississippi Insurance Department have asked the Hoggatts to supply additional information on Ethan's faux Allstate policy. The Hoggatts had been afraid to reply, fearing additional scathing reprimands and sanctions from the district court.
16. Those criminal charges are yet active and pending against Allstate and its agents, now, post dismissal of the civil action.
17. When the Hoggatts amended their criminal affidavit to the Mississippi Attorney General's Consumer Protective Division to include documentation of criminal acts committed in concert, after the filing of the civil complaint in state court, including but not limited to claims of obstruction of justice by Allstate attorneys, the District Court sanctioned the Hoggatts again. ROA.1087.
18. When the Court denied the Hoggatts' duly filed Motion for Order to Amend the Complaint, not only did the District Court deny the Hoggatts' Motion, but directed that the Hoggatts pay for Allstate's attorney's fees for responding to the Hoggatts' motion to amend, *even when Allstate had not requested attorneys'*

fees, stating, “The Court therefore awards Allstate its reasonable attorneys’ fees incurred in responding to the motions to amend and moving for the instant protective order and sanctions.” “Similarly, Allstate does not specifically ask for fees in responding to the motions to amend. However, the Court finds that the motions to amend and the motion for protective order and sanctions are inextricably linked and arise from the same conduct. [Emphasis added]

ROA.1085

19. The District Court denied the Hoggatts’ September 3, 2019 Motion to Appeal the Magistrate Judge’s Decision and the Hoggatts’ September 20, 2019 Motion for Certificate of Appealability *ten months after they were filed*, on the same day that the District Court dismissed the entire civil action, July 23, 2020. ROA.11.
20. The Court sanctioned the Hoggatts *for seeking* the interlocutory review in the United States Court of Appeals for the Fifth Circuit, awarding Allstate additional attorneys’ fees, stating “Victoria Hoggatt quickly earned another sanctions order when she filed two motions in this Court challenging the Magistrate Judge’s sanctions order.” *See*, Pet. App.10a.
21. The District Court sanctioned the Hoggatts reporting criminal activity to authorities, when the Hoggatts amended their criminal affidavit that was first filed prior to any civil action, adding criminal conduct committed by Allstate agents after the initial state court case was filed *responding to the Hoggatts motions to amend* their complaint and attorney’s fees for Allstate’s moving for a protective order and sanctions. ROA.1085

22. Then the district court was angered when the Hoggatts filed an appeal to the District Court, for a final ruling on the Magistrates' sanctions order, to modify or set aside the sanctions order, or in the alternative, to certify the order for interlocutory appeal pursuant to 28 U.S.C. § 1292(b), the District Court later characterizing seeking interlocutory appellate review as "challenging" the Court. The Court didn't rule on those two motions concerning interlocutory appeal for ten months, and then on the same day it dismissed the entire case.
23. Post Notice of Appeal, the District Court additionally ordered the Hoggatts to pay to Allstate attorneys' fees that Allstate incurred in filing a Motion for Contempt, for preparing its Memorandum in Support of its Motion for Contempt, and attorney's fees for responding to Plaintiffs' Rule 60 Motion for Relief from a Judgment or Order, even though additional evidence, a tape recording of the Allstate agent, Andy Dyson, made before any criminal charges were filed, and made months before this civil action was first filed in state court, added FRCP Rule 60 additional evidence of Allstate's negligence and intent.
24. Post dismissal, the District Court found Mrs. Hoggatt *and her clients* in contempt of court, ROA.1526, issued two monetary judgements *in favor of Allstate*, so that Allstate could proceed with "garnishments" against the Hoggatts, and barred Mrs. Hoggatt from practice in the District Court until paying \$8085, though the Court was fully apprised that like many Mississippians, the Hoggatts are scrambling to pay their bills in this pandemic.

25. Seventy-one-year-old Dr. Hoggatt has not been able to work since March 13, 2020, due to being assessed “high risk staff” by the Mississippi State Board of Dental examiners, meaning high risk of lethal consequences of covid infection.
26. At a November 18, 2020 Show Cause hearing, the Hoggatts supplied the District Court an IRS notice that Dr. and Mrs. Hoggatt are subject of a tax lien of \$11,951.04, payable within two weeks, and have barely have adequate social security to meet all their regular monthly bills timely.
27. Mrs. Hoggatt worked day and night to protect her family by prosecuting this complex civil action and appeal, which has seen the recusal of Chief Judge Sharion Aycock, and a total of 10 lawyers defending Allstate agents, Jacob C. Ladnier and Jason B. Purvis of the law firm of Purvis & Co. PLLC; Roehelle Morgan and Bertis Wayne Williams of Webb Sanders & Williams, P.L.L.C.; Charles Cowan, Danielle Love Burks, and Cory Radicioni of Wise Carter Child & Caraway, P.A.; Harry Case Embry, Jay Atkins, and Ben Woodhouse of McAngus, Goudelock & Courie.
28. The catch-22 is that District Court has barred Mrs. Hoggatt “from filing any future lawsuit in the district”, which severely limits her ability to work and pay the sanctions that the District Court has imposed. *See* Pet. App. 9a.

Background of Insurance Claim

29. Petitioner Eric Hoggatt, DDS, “Dr. Hoggatt” is the father of Petitioner Ethan Hoggatt, “Ethan”.

30. Attorney for the Petitioner s, Victoria Johnson Hoggatt, represents in this civil action both her husband, Dr. Hoggatt, and her son, Ethan.
31. Both Dr. Hoggatt and his son Ethan, had separate Allstate Insurance Policies.
32. Dr. Hoggatt has paid Allstate Agent Andy Dyson for home and/or auto insurance at least since April of 2012, and had never made a claim on any policy until September 15, 2020.
33. In **March of 2018**, Ethan's car was totaled through no fault of his own.
34. Progressive insurance settled the claim with Ethan and subsequently Ethan called Defendant Andy Dyson, his Allstate agent, in Tupelo, Mississippi, to cancel his Allstate auto insurance because he no longer had a vehicle.
35. Defendant Suzanne Hand, is an employee of Defendant Andy Dyson, an Allstate agent, in Tupelo, Mississippi.
36. In **April, 2018** Defendant Suzanne Hand 'sold' Petitioner Eric Hoggatt's son, Ethan Hoggatt, an Allstate "comprehensive" policy when he called to cancel his Allstate car insurance, when he no longer owned a car.
37. By telephone wire, Defendant Suzanne Hand told Petitioner Eric Hoggatt's son, Petitioner Ethan Hoggatt, coercive and false statements, when she falsely stated that if he (Ethan) didn't buy Allstate insurance, he could not buy insurance "for six months", and sold him a "comprehensive" policy.
38. Ethan thought his purchase of insurance would cover him if he was driving someone else's car, as he was being billed monthly for Allstate Insurance, and

such insurance quite obviously could not “follow the car”, as all parties knew that Ethan had no car.

39. **September 15, 2018**, Petitioner Ethan Hoggatt wrecked Petitioner Eric Hoggatt's Toyota, and Defendant Allstate Insurance claims agents said that Ethan's policy covered *nothing*.

40. Mrs. Hoggatt's insurance was an entirely different policy, #985382766, owned by Mrs. Hoggatt and her husband, and all parties knew that it rightfully paid to repair the vehicle that her son Ethan ran into.

41. On or about **September 23, 2018**, Allstate Claims Agent Maria Alvarez stated on recorded audiotape, concerning Respondent Hand's assertion that Ethan should continue Allstate Insurance coverage or he couldn't buy Allstate Insurance for six months, “That was wrong! They shouldn't have said that!”

42. Respondent Hand thereby violated 18 U.S. Code § 1343 – Fraud by wire, when she committed wire fraud for her false assertions made by wire.

43. She was thereby negligent per se, by reason of criminal wire fraud, irrespective of whether that wire fraud was part of a RICO enterprise.

44. Respondent Allstate and its agent, Respondent Andy Dyson, always knew that since Dr. Hoggatt's Allstate Insurance policy #985382766, owned by Mrs. Hoggatt and her husband, did timely pay to fix the pickup Ethan ran into, that the only policy that the Hoggatts and Allstate ever had issue with, was Ethan's, Dr. Hoggatt's son's, entirely separate policy. *See*, <https://youtu.be/VldZAPqWXfE>, **September 25th, 2018** audio of Andy Dyson.

45. In November of 2018, the Hoggatts filed a criminal affidavit with the Consumer Fraud Division of the Mississippi Attorney General's office, for wire fraud concerning only Ethan's Allstate dummy policy, since Allstate drafted Ethan's bank account for premiums for 10 months, knowing he owned no car.
46. Ethan Hoggatt's Allstate policy is void on its face, by its own language, to-wit: "This policy shall be deemed void from its inception if it was obtained or renewed through material misrepresentation, fraud or concealment of material fact." Page 6 of June 16, 2018 "contract", ROA.279.
47. Ms. Hand's writing a policy, and falsely entering in the "insurance contract", that Ethan Hoggatt was the owner of a Toyota Yaris vehicle, with full knowledge he owned no such vehicle, is certainly a "policy [that should] be "deemed void from its inception" since "it was obtained or renewed through material misrepresentation, fraud, or concealment of material fact(s), made by Ms. Hand.
48. When Respondent Hand utilized the US mails to transmit Ethan's "policy" that was fraudulent on its face, with false VIN number, in furtherance of a scheme to defraud, she thereby violated 18 U.S.C. § 1341 – Frauds and swindles, Mail fraud.
49. Respondents Allstate, Dyson, and Hand were thereby negligent per se; irrespective of whether their wire fraud was part of a RICO enterprise, they committed documented mail fraud by false writings sent by US Mails.
50. The standards for mail fraud are different than common law fraud, which both the circuit court of appeals and the district court relied on.

51. Allstate and its agent Andy Dyson benefited personally by Ms. Hand's fraudulent assertions when he obtained a portion of the premiums, monies for each of the 10 months paid by Ethan Hoggatt when he owned no car, ostensibly per the insurance "contract", void-at-its-inception through material misrepresentation, fraud, and concealment of material facts.
52. Ms. Hand fraudulently made both the written material misrepresentation in the "contract" that Ethan owned the named vehicle "covered", and the oral material misrepresentation made by telephone wire that Allstate would not write Ethan Hoggatt a policy to cover a vehicle for six months, if he did not pay monies to Allstate for 'comprehensive' coverage.
53. Ethan Hoggatt never signed any such contract.
54. A month after filing criminal fraud charges with the Consumer Protection Division of the Mississippi Attorney General's office, and local law enforcement, Mrs. Hoggatt, an attorney, filed this lawsuit, with Dr. Hoggatt and Ethan as Plaintiffs, only concerning Ethan's void dummy policy.
55. Attorney Case Embry, Respondent Andy Dyson's attorney, repeatedly utilized the wires (email) to pressure attorney Victoria Hoggatt, that she get another insurance agent, which she told him would be difficult in the middle of a claim and lawsuit.
56. Attorney Hoggatt also repeatedly notified attorney Case Embry, who represents Respondent Allstate Agent Dyson, that she could not access either her own Allstate insurance web account, nor Ethan's, though both were paying Allstate insurance premiums.

57. Respondents Allstate, not in the normal course of business, blocked Mrs. Hoggatt's access to her own insurance information on the Allstate website.
58. After Mrs. Hoggatt had filed a criminal affidavit against Allstate in November of 2018, and in retaliation for not been able to intimidate Mrs. Hoggatt to obtain new insurance agent for her own home and car insurance and for filing a criminal affidavit against Allstate, Allstate attorneys took matters into their own hands, to begin their own vendetta against her.
59. Upon direction of Allstate attorneys, and not in the normal course of business, respondent Allstate then intentionally canceled Dr. and Mrs. Hoggatt's *own* car insurance, which was related to their home insurance, and sent to Dr. and Mrs. Hoggatt the FTC required "Notice of Non-renewal", which was fraudulent on its face. *See*, <https://youtu.be/r3Xf2zrE6ys>, an audiotape of LexisNexis, which corroborated earlier letters from LexisNexis stating that no reports had been made.
60. After the Hoggatt filed its initial criminal affidavit with law enforcement, Allstate utilized the US mails to transmit the FTC required "Notice of Non-renewal", which was fraudulent on its face, in furtherance of a scheme to defraud, they thereby violated 18 U.S.C. § 1341 – Frauds and swindles, Mail fraud, irrespective of whether that mail fraud was part of a RICO enterprise.
61. Both the LexisNexis audio and the letters from LexisNexis that related that LexisNexis never prepared any reports upon which cancellation of insurance were based, were included in exhibits filed with the district court,

62. All of the alleged reasons Allstate gave for cancellation of Dr. and Mrs. Hoggatt's own insurance concerned Ethan Hoggatt, and were allegedly "based on LexisNexis reports", though LexisNexis never issued any such reports.
63. Interestingly, Allstate did not cancel Ethan's own dummy policy, but kept on drafting his Renasant bank account, which caused his checking account to overdraft, for over 9 months after he had no car, since mid-March of 2018.
64. Respondent Allstate, Hand, and Dyson thus violated 18 U.S.C. § 1344 Bank fraud each time they drafted Ethan's bank account, as they knowingly executed, or attempted to execute, a scheme or artifice by means of false or fraudulent representations to obtain any of the moneys, funds, credits, assets, securities, or other property under the custody or control of a financial institution, Renasant Bank.
65. Respondents were thereby negligent per se, by reason of criminal bank fraud, irrespective of whether that bank fraud was part of a RICO enterprise.
66. The Mississippi Insurance Department states, "Policyholders shall have the right to cancel their policy and receive a refund of any unearned premium."
67. Contrary to the audio promise of Respondent Dyson, Allstate did not refund any moneys to Ethan Hoggatt. See <https://youtu.be/VldZAPqWXfE>, September 25, 2018 audio of Allstate Agent Andy Dyson.
68. Allstate's *Notice of Non-renewal* of Dr. and Mrs. Hoggatt's own insurance, falsely alleged the name of the company who manufactured the reports upon which Allstate's cancellation of Dr. and Mrs. Hoggatt's own insurance was based,

LexisNexis, and stated that Dr. and Mrs. Hoggatt's had a right to those reports by FTC law.

69. Respondents Allstate, Hand, and Dyson in criminal concert with Allstate attorneys Radicioni and Cowan who directed the retaliatory cancellation of insurance, thus violated **18 U.S. Code § 1513** - Retaliating against a witness, victim.
70. Respondents Allstate, Hand, and Dyson knowingly, with the intent to retaliate, took premediated action harmful to Mrs. Hoggatt, for providing by criminal affidavit to a law enforcement officer truthful information relating to the commission or possible commission of any Federal offense, and upon conviction, could be fined under this title or imprisoned not more than 10 years, or both.
71. Respondent Allstate then mailed the fraudulent Notice of Non-renewal at the direction of Allstate attorneys to 'cancel' Mrs. Hoggatt's own insurance; they thereby acted in concert to violate 18 U.S.C. § 1341 – Frauds and swindles, Mail fraud.
72. Respondents were thereby negligent per se, by reason of criminal mail fraud, irrespective of whether that fraud was part of a RICO enterprise.
73. Respondents' liability does not depend on common law fraud, civil RICO, common law contract, or common law negligence.
74. Additionally, Allstate and its attorneys, Cowan and Radicioni, acted in concert for the purpose of depriving, either directly or indirectly, Dr. and Mrs. Hoggatt of

the equal protection of the laws, or of equal privileges and immunities under the laws provided by the statutory requirement of the Fair Credit Reporting Act.

75. By federal law, if Allstate was to cancel or non-renew insurance, they must provide the name and contact information of a CRA that produced the reports, upon which the cancellation of Dr. and Mrs. Hoggatt's own insurance was alleged to have been based, so that the consumer can obtain the reports and determine the accuracy of the information.
76. Allstate and its attorneys are "two or more persons" who conspired, ... for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws [the federal right to have the reports upon which the cancellation of Dr. and Mrs. Hoggatt's own insurance was alleged to have been based] ... and *the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.*
77. Mrs. Hoggatt first requested those time sensitive reports statutorily required by the Fair Credit Reporting Act from Respondent Allstate's lawyer Charles Cowan, who pretended that the reports *were only to be had through civil discovery*, though he is an experienced insurance defense counsel who knows full well that the reports are not to be gotten through some lawyer. *See* Pet. App.66-67.
78. Mrs. Hoggatt next requested those reports *concerning non-renewal of her own* insurance, from LexisNexis, and LexisNexis says they never produced any

reports on either Respondent Ethan Hoggatt, Dr. Eric Hoggatt, nor Mrs. Hoggatt, for Allstate or anyone else. Pet.App.64-65

79. Respondent Allstate's Notice of Non-renewal was fraudulent on its face.
80. Petitioners duly recorded those oral statements made by LexisNexis about having made no report on Ethan Hoggatt, and entered them in the record, and cited as well the July 16, 2019 letters from LexisNexis concerning Dr. and Mrs. Hoggatt. *See* Appendix J.
81. Mrs. Hoggatt first requested those reports from Allstate's lawyers, and Allstate defense counsel Charles Cowan responded that those reports would have to be gotten through formal litigation discovery.
82. The district court erred in finding that Mrs. Hoggatt was gravely wrong to assert to attorney Cowan that Allstate must give the reports upon which cancellation of her own insurance was based, as it was Allstate attorney Charles Cowan who repeatedly asserted that those reports would have to be gotten through formal litigation discovery. *See* Appendix K, with no mention of requesting the reports from LexisNexis.
83. But more important, experienced Allstate insurance defense attorney Cowan was intentionally and willfully wrong in vehemently asserting by wire, emails, that Mrs. Hoggatt couldn't get the required extremely time sensitive reports, about her own insurance policy, without formal litigation discovery.
84. Respondent Allstate and Allstate attorney Cowan knew there were no LexisNexis reports to be had.

85. Respondent Allstate utilized attorney Cowan to try to keep the Hoggatts from finding out that the Notice of Non-renewal was fraudulent on its face, by attorney Cowan's threats that it would be unethical for Mrs. Hoggatt to respond to the FTC notice of non-renewal. *See*, APPENDIX J, Letters from LexisNexis, showing that LexisNexis never prepared reports upon which the cancellation of Dr. and Mrs. Hoggatt's own insurance was based, as Allstate fraudulently alleged by the US mails.
86. Defendant Allstate's counsel Charles Cowan knew that Dr. and Mrs. Hoggatt's policy was never the subject of the lawsuit.
87. Allstate attorney Cowan's intent in orchestrating havoc to Dr. and Mrs. Hoggatt was to act in concert with his employer, Allstate, to interfere with civil rights for the purpose of depriving, either directly or indirectly, Dr. and Mrs. Hoggatt of the equal protection of the laws, or of equal privileges and immunities under the Fair Credit Reporting Act.
88. After Mrs. Hoggatt swore out a criminal affidavit against Allstate in November of 2018, and delivered it to both the Mississippi Commissioner of Insurance and the Mississippi Attorney General, Allstate was on notice that she was a witness to criminal acts of Allstate, Dyson, and Hand.
89. A reasonable juror may conclude that Allstate attorney Cowan's intent was to act in concert with his employer, Allstate, to further cause expense, misery, and loss to, by loss of Dr. and Mrs. Hoggatt's own insurance, and to hinder and

intimidate her, for swearing out criminal charges against Allstate in November of 2018.

90.42 U.S.C. § 1985 OBSTRUCTING JUSTICE; INTIMIDATING PARTY, WITNESS, OR JUROR
in relevant part, states,

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, ...or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws:...

If two or more persons in any State or Territory conspire, ... in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

91. The district court magistrate erred, when it wrongly deemed the FTC mandated reports a "discovery dispute", and that the insured's obtaining those alleged reports, was a question that could be decided by a federal magistrate in a civil action, especially because Dr. and Mrs. Hoggatt's own insurance policy being non-renewed was not even the policy subject of the lawsuit.
92. The consumer is guaranteed a right to those reports by law, under the purview of the Federal Trade Commission, upon cancellation of insurance.

93. Allstate's non-compliance with that FTC provision is, by law, prosecutable by state attorney generals, pursuant to 15 U.S.C. § 1681s § 621. Administrative enforcement, which states in part,

94. (c) **STATE ACTION FOR VIOLATIONS**

(1) **AUTHORITY OF STATES** In addition to such other remedies as are provided under State law, if the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this subchapter, the State—

(A) may bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction;

(B) subject to paragraph (5), may bring an action on behalf of the residents of the State to recover—

(i) damages for which the person is liable to such residents under sections 1681n and 1681o of this title as a result of the violation;

(ii) in the case of a violation described in any of paragraphs (1) through (3) of section 1681s–2(c) of this title, damages for which the person would, but for section 1681s–2(c) of this title, be liable to such residents as a result of the violation; or

(iii) damages of not more than \$1,000 for each willful or negligent violation; and

(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

95. Thus, the Hoggatts rightfully filed a subsequent criminal affidavit with the Mississippi Attorney General's office.

96. The Hoggatts amended criminal affidavit stated in part,

On or about **April 8, 2019**, at the Case Management Order conference of all attorneys in Dr. Hoggatt's civil action against Allstate, Allstate Agent and attorney Charles Cowan of law firm Defendant Wise Carter Child & Caraway, P.A., stated in the hearing of Case Embry, the attorney for Dr. Hoggatt's then current insurance agent, Andy Dyson, that Dr. Hoggatt couldn't have that reporting information required by the Fair Credit Reporting Act, but repeatedly declined giving 'authority' for such false and obstructive statements.

Attorney Case Embry, Cory Radicioni, and Charles Cowan all are smart and experienced insurance defense counsel who are absolutely sure that the Supremacy Clause of the federal Constitution means that federal law supersedes state law, and that the consumer is due the documentation on which an insurance cancellation was based, per the Fair Credit Reporting Act, notwithstanding that the poor consumer has had to sue his own insurance agent for denial of claims.

Allstate attorney Cowan's intentional and egregious obstruction of his client, Allstate's, compliance with the legal requirements of the Fair Credit Reporting Act provisions promulgated to protect consumers, crosses the line between zealous advocacy and **Intentional Obstruction of Justice** and interference with contract.

On or about **May 22, 2019**, Allstate' attorney Cowan, reiterated his 'stand', that Dr. Hoggatt could not have those Allstate reports, which in fact attorney Cowan knows are legally guaranteed by the Fair Credit Reporting Act to all consumers upon cancellation of insurance. Pet. App.66-67

97. Allstate counsel Charles Cowan and Cory Radicioni did not say, "Oh, you have to request those reports from LexisNexis", because they knew that there were no LexisNexis reports, as Respondent Allstate had falsely alleged by US mails.
98. The Mississippi Insurance Department requires that a copy of the *Mississippi Policyholder's Bill of Rights* be sent to all policy holders when their insurance is non-renewed, along with the Fair Credit Reporting Act notice.
99. Respondent Allstate sent to Dr. and Mississippi the *Mississippi Policyholder's Bill of Rights* which states, "policyholders shall have the right to receive in writing *from their insurance company* the reason for any cancellation or nonrenewal of coverage. The written statement from the insurance company must provide an adequate explanation for the cancellation or nonrenewal of coverage."
100. Victoria Hoggatt did contact *her own insurer*, at the Allstate's department that invited her to do so in the Notice of Non-Renewal.

101. Attorney for Allstate, Charles Cowan, repeatedly and wrongly asserted by wire that attorney Victoria Hoggatt's contact with her *own* insurer, after Allstate sent a fraudulent on its face notice of non-renewal, violated ethics, though attorney Cowan always knew that only Ethan's insurance policy at issue, and was in no way connected with his parents' insurance policy.

102. MISSISSIPPI RULES OF PROFESSIONAL CONDUCT, Rule 4.2,

Communications with Person Represented by Counsel, states in pertinent part,

In representing a client, *a lawyer shall not communicate about the subject of the representation* [Emphasis added] with a party the lawyer knows to be represented by another lawyer *in the matter*, [Emphasis added] unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

Comment

This Rule does not prohibit communication with a party, or an employee or agent of a party, concerning matters outside the representation. [Emphasis added] For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with non-lawyer representatives of the other regarding a separate matter. Also, parties to a matter may communicate directly with each other and a lawyer having independent justification for communicating with the other party is permitted to do so. Communications authorized by law include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.”

103. Allstate's "Jennifer" stated **May 24, 2019**, on the conversation recorded by Allstate, that Allstate Casualty and Insurance Company didn't have those documents that Allstate relied upon to cancel Dr. Hoggatt's car insurance, because

“We threw them out”, which destruction of evidence gives rise to both civil and criminal penalties for 18 U.S.C. § 1519, SOX (Sarbanes-Oxley Act) violations, for destruction of materials to impair their use in investigative or judicial proceedings.

104. Allstate’s Jennifer further stated that she would consult with Wise Carter Child & Caraway attorney Charles Cowan. ROA.1198

105. Jennifer said she was going to talk to attorney Cowan, who directed Jennifer not to send the Allstate assessment that the letter states is “attached”. *See*, APPENDIX L, Pet.App.68.

106. In contrast, Allstate’s fraudulent *Notice of Non-Renewal* stated different reasons for non-renewal, i.e., that the cancellation was due to driving violations Ethan had had, in his own car in 2016, and on the one September 2018 accident.

107. Allstate attorneys filed a *Motion for Sanctions*, and the magistrate judge, upon request of Allstate counsel, sanctioned the Petitioner s and their counsel thousands of dollars, saying that the Hoggatt’s filing the second criminal charges was "disruptive" of the lawsuit, though the second affidavit was a continuation of the criminal affidavit filed prior to any litigation.

108. In truth, it was Allstate’s aim to disrupt the Hoggatts’ lives as thoroughly as possible.

109. Petitioners’ *Second Motion to Amend the Complaint* to add subsequent acts of fraud by Allstate and its attorneys was denied.

110. Petitioners petitioned the district court, to either review and overturn the Magistrate's *Order of Sanctions*, or in the alternative, for a declaration of appealability of the Magistrate's Order of Sanctions and of the Order denying Petitioner s' *Second Motion to Amend the Complaint*, since adding other parties couldn't well be done after the case was tried.
111. The Hoggatts' were also ordered to pay Allstate lawyers for their response to Petitioners' pleadings that sought relief from the Magistrate's Order.
112. The trauma and harassment intentionally caused by Respondent Allstate, of cancelling Mrs. Hoggatt's own insurance during ongoing contentious litigation, (with by then 84 different documents, plus exhibits, since the initial filing in December of 2018), caused Mrs. Hoggatt to break out in dreadful shingles, with which she suffered for months. *See* <https://youtu.be/iWSJrvngxOG0>.
113. The district court, prior to its order of sanctions, had exhibits showing that Allstate's notice of non-renewal to Dr. and Mrs. Hoggatt was fraudulent on its face. *See*, Appendix J, letters from LexisNexis, Pet. App.64a-65a.
114. It is in the public interest that Allstate not sell such policies that the Allstate contract itself says is void at inception, that cause unnecessary, and egregious infliction of mental distress.
115. The Allstate employee, respondent Hand, who made the fraudulent claim that if Ethan didn't buy Allstate Insurance after he had no car, he couldn't obtain Allstate insurance for six months, initially hired two lawyers from the Mississippi gulf coast who do whistle-blower litigation.

116. Only discovery will allow Ms. Hand to testify as to who instructed her to sell the dummy policies, and how many she has written.
117. Those dummy policies are easily discovered, as they are all the Allstate policies that purport to cover autos comprehensively, but contain no state mandated liability coverage.
118. The Allstate agency owner Andy Dyson did not deny that Ms. Hand said the fraudulent “no insurance for six months” statement, but he said it was for a *different* reason that they sold such insurance, to persons who had no car.
119. The Allstate agent then hired two different two lawyers in Jackson, Mississippi, to defend him.

REASONS FOR GRANTING THE WRIT

- 120. The Federal Courts of Appeal are unanimous that petitioning law enforcement for redress is protected by the 1st Amendment**

The final clause of the First Amendment, the right to petition the government for a redress of grievances, is fundamental to “the very idea of a government republican in form.” *United States v. Cruikshank*, 92 U.S. 542, 552 (1875). *See also United Mine Workers of Am. v. Illinois State Bar Ass’n*, 389 U.S. 217, 222 (1967).

The right to petition includes petitioning “all departments of the Government.” *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972). Courts nationwide have found that reporting criminal conduct, executing a criminal complaint with law enforcement, and assisting with a law enforcement investigation each constitute an exercise of the First Amendment right to petition. *See, e.g., Gable v. Lewis*, 201 F.3d 769, 771 (6th Cir. 2000) (noting that “[s]ubmission of complaints and criticisms to nonlegislative and nonjudicial public agencies like a police department constitutes petitioning activity protected by the petition clause”); *Estate of Morris ex. rel. Morris v. Dapolito*, 297 F. Supp. 2d 680, 692 (S.D.N.Y. 2004) (concluding that swearing out a criminal complaint against a high school teacher for assault and seeking his arrest were protected First Amendment

petitioning activities); *Lott v. Andrews Ctr.*, 259 F. Supp. 2d 564, 568 (E.D. Tex. 2003) (noting that “[t]here is no doubt that filing a legitimate criminal complaint with law enforcement officials constitutes an exercise of the First Amendment right”); *Arim v. General Motors Corporation*, 520 N.W. 2d 695 (Mich. Ct. App. 1994) (granting summary judgment to individuals who were sued for their participation in a criminal sting operation run based on the First Amendment); *United States v. Hylton*, 558 F. Supp. 872, 874 (S.D. Tex. 1982) (noting that filing a legitimate criminal complaint with law enforcement officials constitutes an exercise of the First Amendment right); *Curry v. State*, 811 So.2d 736, 743 (Fla. Dist. Ct. App. 2002) (finding that complaints, even though numerous, made to law enforcement agencies are protected First Amendment activity regardless of “unsavory motivation” of petitioner). *Reporting Crime: A Victim’s First Amendment Right*, Meg Garvin, NCVLI Lead Staff Attorney, National Crime Victim Law Institute, NCVLI News fall/winter 2004

121. This case is of national importance to have the Supreme Court decide because the decisions in this case conflict with the decisions of other appellate courts that have considered a citizen’s First Amendment right to petition for redress of grievances.
122. No Respondent offered another case wherein civil counsel was fined and sanctioned for amending a criminal affidavit to include attorneys.
123. Allstate would not have been able to send the false notice of non-renewal and then hide its falsity, without direction from attorney Cowan firm and his law firm. An attorney’s license is not an invitation to engage in mail fraud, witness retaliation or intimidation, obstructive behavior, and a lawyer no less than anyone else is bound by generally applicable legislative enactments. Nothing should exempt professionals, as a class, from the law’s proscriptions, and the fact that a defendant has the good fortune to possess the title “attorney at law” is, standing alone, is completely irrelevant. Behavior prohibited by criminal

statutes, regardless of the person to whom it may be attributed, is wrong. Courts should not shrink from finding an attorney liable when he crosses the line between traditional rendition of legal services and active participation in tortuous, retaliatory, and/or criminal activity.

124. Allstate insurance never had a contract of insurance with Ethan Hoggatt.

125. Ethan Hoggatt's dummy "contract for insurance", upon which no claim could ever be made, was void on its face, due to Ms. Hand's own written declaration on the policy that Ethan Hoggatt owed a vehicle, that she knew he did not own.

126. Ms. Hand wrote the fake policy with no state mandated liability coverage, and with a VIN number of a vehicle owned by Progressive Insurance or its assigns.

127. After Ethan notified Allstate he was cancelling his policy because he was carless, as a matter of law, a valid insurance policy never existed.

128. In the entire two years of pleadings, Allstate never addressed at all the fact that Ethan's Allstate policy was always void on its face, by the policy's own specific and unambiguous language, to-wit: "This policy shall be deemed *void from its inception* if it was obtained or renewed through material misrepresentation, fraud or concealment of material fact." ROA.278

129. If ever there was material misrepresentation, fraud, or concealment of material fact in an 'insurance policy', surely Ms. Hand's written fraud that stated that Ethan was the owner of a car that Mrs. Hand knew he didn't own, would qualify. ROA.260.

130. Ms. Hand's inserting in an 'insurance policy' a V.I.N. number for a vehicle then owned by Progressive Insurance or its assigns is certainly material.

ROA.260

131. **Since Allstate insurance never had a contract of insurance with Ethan Hoggatt**, the district court erred in dismissal for failure to state a claim, basing the court's opinion in common law fraud, civil RICO, and common law contract. The Hoggatts' negligence per se claims, due to Respondents' criminal acts are valid, strong, and well documented. The Amended complaint's claims sustain a viable cause of action.

132. Petitioners Amended complaint validly asserted Negligence per Se for Allstate's criminal acts; Petitioners' Motion to Amend should have been granted; Allstate's tortuous acts committed after this lawsuit was instigated should be fair game for civil action.

133. Allstate's criminal acts are currently under investigation by the Mississippi Attorney General's office.

134. **The District Courts' dismissal after denying the Hoggatt's Motion to Amend the Complaint is an error of such magnitude as to require reversal.**

135. Allstate's pattern and intent to defraud the consumer continued after instigation of both criminal charges and civil action.

Where the question is one of fraudulent intent, the rule is the same in civil and criminal cases. *See Wood v. United States*, 16 Pet. 342, 10 L. Ed. 987, where the court so held and stated that it has always been deemed allowable to introduce evidence of other acts and doings of the party of a kindred character in order to illustrate or establish his intent or motive in the

particular act directly in judgment. "Indeed, in no other way would it be practicable, in many cases, to establish such intent or motive, for the single act, taken by itself, may not be decisive either way; but when taken in connection with others of the like character and nature, the intent and motive may be demonstrated almost with a conclusive certainty." 16 Pet. 342, 358, 10 L. Ed. 987. In *Butler v. Watkins*, 13 Wall. 456, 464, 20 L. Ed. 629, the court said: "In actions for fraud, large latitude is always given to the admission of evidence." In *Mutual Life Ins. Co. v. Armstrong*, 117 U.S. 591, 6 S. Ct. 877, 29 L. Ed. 997, the court held that a repetition of acts of the same character naturally indicated the same purpose in all of them, and said that evidence of other frauds tended to establish the charge in the case on trial of a premeditated purpose to cheat and defraud. See also *Spurr v. United States*, 6 Cir., 87 F. 701.

136. Allstate attorneys and agents continued a premeditated purpose to cheat and defraud.
137. The Fifth Circuit Court of Appeals was to consider de novo the issues upon which the district court based its opinion to dismiss the Hoggatts' civil action with prejudice. The Second Amended complaint added many viable and documented claims, including intentional infliction of mental distress and numerous negligence per se claims, which accrued after the filing of the original complaint.

When considering a motion to dismiss, if the motion appears meritorious and a more carefully drafted complaint might cure any deficiencies, the district court **must** "give the plaintiff an opportunity to amend his complaint, rather than dismiss it ..." [Emphasis added] *Fuller v. Rich*, 925 F. Supp. 459, 461 (N.D. Tex. 1995) *Fuller v. Rich*, 925 F. Supp. 459, 461 (N.D. Tex. 1995). The district court must first permit the plaintiff to amend his or her complaint unless the court has a substantial reason for denying the request to amend. *Rolf v. City of San Antonio*, 77 F.3d 823, 828 (5th Cir. 1996) ("A decision to grant leave is within the discretion of the court, although if the court lacks a substantial reason to deny leave, its discretion is not broad enough to permit denial.").

Under the district court's standard of determination, even if factual allegations are untrue, the court must view the allegations in the light most

favorable to the nonmovant. *Jebaco Inc. v. Harrah's Operating Co.*, 587 F.3d 314, 318 (5th Cir. 2009) (“Viewing the facts as pled in the light most favorable to the nonmovant, a motion to dismiss or for a judgment on the pleadings should not be granted if a complaint provides ‘enough facts to state a claim to relief that is plausible on its face.’”)

In *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1965 (2007), the U.S. Supreme Court imposed a mere “plausibility” standard for complaints, but did not impose a “probability” requirement. Instead, the Court required enough facts to raise a reasonable *expectation that discovery* [Emphasis added] will produce enough evidence to indicate that a claim exists. *Lormand v. US Unwired*, 565 F.3d 228, 257 (5th Cir. 2009).

138. The District Court, prior to dismissal, had both audio recordings exhibits and document exhibits from LexisNexis that proved that the Allstate Notice of Non-renewal of Dr. and Mrs. Hoggatt’s own auto insurance was fraudulent on its face. Additionally, numerous exhibits of emails from Allstate counsel Charles Cowan showed that he repeatedly and consistently, but wrongly, stated that Allstate’s non-renewal of Dr. and Mrs. Hoggatt’s own auto insurance was a “discovery matter”.

139. Allstate counsel Charles Cowan showed that he repeatedly and consistently, but wrongly, and that contacting Allstate as directed in its fraudulent Notice of Non-renewal would be “contacting my client”, though Allstate was the party who initiated the contact, and was still drafting Dr. and Mrs. Hoggatt’s own bank account for auto insurance.

140. **Mississippi recognizes the doctrine of Negligence Per Se.** The Second Amended complaint added many viable and documented claims, including intentional infliction of mental distress and negligence per se claims, which accrued after the filing of the original complaint.

"Mississippi recognizes the doctrine of **negligence per se**, which essentially provides that a breach of a statute or ordinance may render the offender liable in tort without proof of lack of due care." *Dallas v. Premier Vehicle Transp., Inc.*, No. 1:16-CV-358-LG-RHW, 2017 WL 3389793, at *2 (S.D. Miss. Aug. 7, 2017)

141. **The decisions below have the effect of chilling a victim's First Amendment rights.**

142. On November 13, 2018, the Hoggatts filed criminal charges for mail and wire fraud with the Mississippi Attorney General's Consumer Fraud Division and the local law enforcement, *a month before any civil lawsuit was filed*. The Hoggatts amended those criminal charges during this civil action as additional criminal conduct was committed, discovered, and documented.

143. As Mrs. Hoggatt related to the District Judge at a show cause hearing November 18, 2020, both the local District Attorney and the Mississippi Insurance Department have asked the Hoggatts to supply additional information on Ethan's faux Allstate policy. The Hoggatts had been afraid to reply, fearing additional scathing reprimands and sanctions.

144. Criminal charges against Allstate and its agents based on the same acts have not been resolved. Those charges are yet active and pending against Allstate and its agents, now, post dismissal of the civil action.

145. **The district court's civil contempt sanction constitutes an unwarranted, damaging, and widely published public reprimand.**

Mrs. Hoggatt has no "history as a vexatious litigant". Neither Ethan nor Eric Hoggatt are contemptible. While a district court may, as a civil contempt sanction, bar a vexatious litigant from filing any future lawsuit in the district. *Barnes v. United States*, 800 F. App'x 284, at *286 (5th Cir. 2020), the decision to impose such a sanction must be supported by the contemnor's "history as a vexatious litigant." *Barnes*, 800 F. App'x at *286. Petitioner Ethan Hoggatt is as mild mannered and agreeable as can be. Petitioner Dr. Eric Hoggatt has a fine reputation with fellow dentists and the community. He is neither contentious nor vexatious as can be seen by exhibits attached to filings. *See*, <https://www.currentconstitutionalapp.com/Dr--Hoggatt--DDS-Testimonials.html>.

146. Anyone searching attorney Victoria Hoggatt can read the derogatory, defamatory, and damaging language, in those orders, and will believe the language.

147. This Petition for a Writ of Certiorari should be granted, to correct the published Contempt Order asserting that "Awarding attorneys' fees to the insurer was proper because the insured and his family attempted to circumvent the discovery process by seeking documents outside of formal discovery."

148. The Hoggatts never sought to “circumvent discovery”. There were no documents, on which Allstate falsely alleged by US mail, that cancellation of Mrs. Hoggatt’s own insurance was based, to discover. The Hoggatt never had to ask permission of Allstate, nor the district court to exercise the rights afforded them by the Fair Credit Reporting Act, and indeed, rights promoted by Mrs. Hoggatt’s own insurer, Allstate, in its fraudulent notice of non-renewal.
149. Allstate lawyers should not be allowed to act in concert with Allstate employees to cancel an attorney’s own insurance, which was not at issue in the civil action, and then use the US mails and the wires to send an intentionally fraudulent Notice of Non-renewal, and then attempt to hide what has gone on by crying “Discovery dispute!” “Contacting my client!”
150. Far from being “vexatious”, since being admitted to the bar in 1978, Mrs. Hoggatt has reached amicable settlements in every case except two. Both were dismissed by this district court, by the Honorable Michael Mills. Both of Mrs. Hoggatt’s civil cases that were dismissed sought to amend the initial complaint to add an obstructive Mississippi attorney to the complaint.
151. And even more coincidental, in both civil actions, a video exhibit of attorney John Wheeler made by Mrs. Hoggatt was tendered as evidence.
152. In the first instance of dismissal, in a case years prior to this civil action, Mrs. Hoggatt, representing the plaintiffs, used the video exhibit of attorney John Wheeler to demonstrate a pattern of denial of statutory rights of poor patients, by

the largest rural health care system in America, North Mississippi Medical Center. See, <https://www.youtube.com/watch?v=I6q6xMtgqxA>.

153. In this civil action, it was the *Respondent*, Allstate, that offered the same video exhibit video exhibit of attorney John Wheeler, claiming the video showed Mrs. Hoggatt's bad acts towards lawyers.
154. The Wheeler video eventually became a teaching tool for Continuing Legal Education, *Freedom Song*, showing what a lawyer ought *not* to do, i.e., attempt to obstruct civil litigation by denying citizens what they are due.
155. Like attorneys for Allstate and its agents did in this civil action.
156. The United States Court of Appeals for the fifth Circuit has decided an important federal question in a way that conflicts with or has so far departed from the accepted and usual course of judicial proceedings, and has given official permission or approval for punishment for exercise of the Hoggatts' First Amendment right to report criminal conduct. Such a departure by a lower court calls for an exercise of this Court's supervisory power.
157. By deciding that a consumer's absolute right to have a federally mandated Section 612 of the Fair Credit Reporting Act "notice of non-renewal" with accurate information, so the consumer can investigate, and if necessary, dispute the reports upon which such an important matter as cancellation of insurance is allegedly based, may be somehow turned into "a discovery issue", the United States Court of Appeals for the Fifth Circuit has decided an important question of federal law that has not been, but should be, settled by this Court.

Conclusion

Respectfully submitted, this the 19th day of July, 2021.

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