

**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT,
IN AND FOR MARTIN COUNTY, FLORIDA**

TOWER HILL SIGNATURE INSURANCE
COMPANY, et al.,

Plaintiffs,

vs.

Case No.: 2020-CA-000409

SFR Services, L.L.C., et al.,

Defendants.

_____ /

ORDER DISMISSING THIRD AMENDED COMPLAINT

THIS CAUSE came before the Court on defendants’ motion to dismiss plaintiffs’ third amended complaint or, alternatively, to sever claims (DE 1062). Plaintiffs filed a response on January 3, 2025 (DE 1076). Having considered the submissions of the parties¹ and being otherwise advised of the premises, the Court **GRANTS** the motion for the following reasons and directs plaintiffs to: (i) sever each plaintiff’s claims into a separate complaint in a separate action and (ii) in each case, to cure the pleading deficiencies discussed below.

BACKGROUND

Plaintiffs are five property insurance companies (collectively, “Tower Hill Insurers”). The defendants are SFR Services, LLC (“SFR”), Ricky McGraw, Elite Claims Consultants, LLC, Matthew McGraw, McGraw Property Solutions, LLC, Jessica McGraw, McGraw Asset Management, LLC, and Will Mynatt. The

¹. Defendants filed a supplemental memorandum (DE 1081), and plaintiffs responded to the supplemental memorandum (1085) and also moved to strike it. The motion to strike is denied.

Complaint's seventy counts are summarized as follows:

(A) Claims by each Tower Hill Insurer against SFR for violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), § 501.201, *et seq.*, Florida Statutes (counts I, XV (misnumbered IV), XXIX, XLIII, LVII);

(B) Claims by each Tower Hill Insurer against all defendants for violating Florida's RICO Act (counts II, XVI, XXX, XLIV, LVIII);

(C) Claims by each Tower Hill Insurer against SFR for fraud (counts III, XVII, XXXI, XLV, LIX);

(D) Claims by each Tower Hill Insurer against Ricky McGraw for fraud (counts IV, XVIII, XXXII, XLVI, LX);

(E) Claims by each Tower Hill Insurer against Elite Claims Consultants for fraud (counts V, XIX, XXXIII, XXVII, LXI);

(F) Claims by each Tower Hill Insurer against Matthew McGraw for fraud (counts VI, XX, XXXIV, XLVIII, LXII);

(G) Claims by each Tower Hill Insurer against SFR for insurance fraud (counts VII, XXI, XXXV, XLIX, LXIII);

(H) Claims by each Tower Hill Insurer against Ricky McGraw for insurance fraud (counts VIII, XXII, XXXVI, L, LXIV);

(I) Claims by each Tower Hill Insurer against Elite Claims Consultants for insurance fraud (counts IX, XXIII, XXXVII, LI, LXV);

(J) Claims by each Tower Hill Insurer against Matthew McGraw for insurance fraud (counts X, XXIV, XXXVIII, LII (misnumbered LI), LXVI);

(K) Claims by each Tower Hill Insurer against Jessica McGraw for

insurance fraud (count XI, XXV, XXXIX, LIII, LXVII);

(L) Claims by each Tower Hill Insurer against McGraw Property Solutions for insurance fraud (counts XII, XXVI, XL, LIV, LXVIII);

(M) Claims by each Tower Hill Insurer against McGraw Asset Management for insurance fraud (counts XIII, XXVII, XLI, LV, LXIX); and

(N) Claims by each Tower Hill Insurer against Will Mynatt for insurance fraud (counts XIV, XXVIII, XLII, LVI, LXX).

Each count of the complaint relies upon and incorporates the allegations contained in paragraphs 1-102 of the complaint, paragraphs 17-102 of which contain specific factual allegations. In certain paragraphs, the Tower Hill Insurers allege that the conduct or acts allegedly were committed “on each of the claims attached hereto as Exhibit “1,” or words to that effect. (3d Amend. Compl., *passim*.) Exhibit 1 is a twelve-page list consisting of 215 separate claims, providing the name of the insured, the county, the address of the property, and the claim number.

The thrust of the complaint is that the defendants allegedly acted, in some form or fashion, to perpetrate a fraudulent scheme after Hurricane Irma (which occurred in September 2017) whereby they enticed homeowners, including those insured by one or another Tower Hill Insurer, to assign their insurance benefits for Irma-related roof damage claims to SFR.

From there, the defendants purportedly engaged in claim adjusting (sometimes by unlicensed adjusters) and submitting claims to one or another Tower Hill Insurer, where the claims allegedly were fraudulent in that the roofs

were not legitimately damaged by Hurricane Irma, or the dollar amounts of the claims were inflated far beyond the actual cost of roof replacement or repair, or both. (Complaint, ¶¶ 54-71.)

The proposed Complaint also includes allegations pertaining to purported misdeeds committed by one or another defendant against the *insureds*, such as violating the three-day “cooling-off” period (¶ 44), requiring *insureds* to pay a 20% cancellation fee on the yet-to-be determined repair/replacement estimate (¶¶ 45-47), and “hinting” allegations that SFR, after receiving insurance proceeds, did not perform the repair/replacement work (¶¶ 49-52).

As explained in the Analysis, below, notably Exhibit 1 does not identify:

- The particular Tower Hill Insurer to which the claim was submitted;
- The amount of the claim;
- Whether the claim was entirely fraudulent as not related to Irma-caused damage;
- Whether the claim was inflated and if so, by how much;
- Whether the claim was paid by the pertinent Tower Hill Insurer;
- Whether the claim was settled;
- Whether the claim was litigated (which the Tower Hill Insurers allege to have occurred), and if so, the outcome of the litigation.

Additionally, with the exception of the Florida RICO counts alleged against all defendants (counts II, XVI, XXX, XLIV, and LVIII), each Tower Hill Insurer sets forth *separate* counts against separate defendants.

ANALYSIS

1. The Complaint improperly combines independent claims of each Tower Hill Insurer in one complaint.

At the outset, the Complaint improperly combines independent claims of separate and independent insurers into one “global” complaint. It is evident from the Complaint that there are five separate Tower Hill Insurers, each with its own separate and independent identity, and each with its own, unique claims, not interrelated with or dependent upon the claims of the other insurers, against the defendants, based upon separate and distinct insurance claims made to each insurer.

This constitutes “misjoinder of parties” under Florida Rule of Civil Procedure 1.250(a), and that rule states that the proper relief is to order severance. *See St. Tropez II, LLC v. Adlerov*, 50 So. 3d 40, 42 (Fla. 3d DCA 2010) (plaintiffs were misjoined where some claims applied to some plaintiffs but not others); *Tamiami Trail Tours, Inc. v. Cotton*, 463 So. 2d 1126 (Fla. 1985) (misjoinder where plaintiffs joined in one complaint to assert causes of action independent of each other). *See also Crescenzo v. Marshall*, 199 So. 3d 353, 356-57 (Fla. 2d DCA 2016) (property owner could not bring six quiet title claims in one action where claims related to separate parcels; severance was appropriate).

In this case, each Tower Hill Insurer’s claims, even though based upon the same core allegations, nonetheless are separate and distinct to each insurer. Moreover, given the current count of 215 claims made to the Tower Hill Insurers, severance into five separate actions will be more efficient and avoid confusion to a single jury in sorting out which of the Tower Hill Insurers is entitled to what.

See Fla. R. Civ. P. 1.270(b).

Accordingly, the Court **ORDERS:**

- Plaintiff Tower Hill Signature Insurance Company shall remain the plaintiff in this case (No. 2020-CA-000409);
- Each of the other plaintiff insurers shall file a separate complaint (with associated filing fees) based upon the specific insurance claims forming the basis for each such insurer's complaint;
- The creation of separate cases is being done as a "severance" pursuant to Rule 1.250(a) and the "new" cases thus will be treated by the Court as having been filed on May 6, 2020 (the original filing date of this action) for statute of limitations purposes;
- All discovery conducted in this case shall apply to all five cases, and any further discovery is hereby consolidated;
- The parties are directed to meet and confer and submit case management plans for this case and each "new" severed case within ten (10) days after the filing of the complaints;
- As next discussed, the current complaint is being dismissed without prejudice for failure to state causes of action, and each plaintiff is granted leave to file, within twenty (20) days after the filing of this Order, an amended complaint or an "new" complaint in the severed cases, as the case may be, curing the deficiencies noted below.

2. The third amended complaint has deficiencies rendering it subject to dismissal, without prejudice, for failure to state causes of action.

The third amended complaint has numerous deficiencies requiring its dismissal, without prejudice and leave to amend. Florida is a “fact-pleading” jurisdiction, not a “notice-pleading” jurisdiction. *Canon v. Ziadie*, 327 So. 3d 327, 330 n.1 (Fla. 4th DCA 2021) (quoting *Louie's Oyster, Inc. v. Villaggio Di Las Olas, Inc.*, 915 So. 2d 220, 221–22 (Fla. 4th DCA 2005)). As next explained, the Tower Hill Insurers have failed to plead allegations that support each of the elements of each cause of action. The lettering corresponds to the lettering contained in the Background section, above.

Additionally, insofar as the insurance claims listed in Exhibit 1 were previously settled or litigated, in the course of amending the complaint and filing the “new” severed complaints, the insurers are instructed to evaluate the viability of litigating any of those insurance claims in this case or the “new” severed cases, whether due to release (in the case of settlement), or under rule 1.170(a) governing compulsory counterclaims, and by the prohibition against “action-splitting,” where a given insurance claim was litigated to conclusion.

(A) The FDUTPA claim against SFR.

As against SFR, the elements of a claim under the FDUTPA under sections 501.204(1) and 501.211(2) are: “1) a deceptive act or unfair practice; 2) causation; and 3) actual damages[.]” *Stewart Agency, Inc. v. Arrigo Enterprises, Inc.*, 266 So. 3d 207, 212 (Fla. 4th DCA 2019). “[A]lthough a claimant does not have to be a consumer to state a claim for actual damages under section

501.211(2), to satisfy all of the elements of a FDUTPA claim, it must show that a consumer was injured or suffered a detriment.” *Id.* at 214 (citing *Caribbean Cruise Line, Inc. v. Better Business Bureau of Palm Beach Cnty., Inc.*, 169 So. 3d 164, 169 (Fla. 4th DCA 2015)). The third amended complaint fails to allege facts supporting each element of this cause of action as to each purported insurance claim made to each insurance company. Accordingly, these claims are dismissed without prejudice to file a curative amended complaint within twenty (20) days after the filing of this Order.

(B) Florida RICO claims.

A complaint under the Florida RICO statute must plead the following elements:

(1) the existence of an enterprise, which the defendant was employed by or associated with in committing the crimes, (2) a pattern of racketeering activity, and (3) at least two ‘incidents’ of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission, or that are otherwise interrelated by distinguishing characteristics and are not isolated incidents.

MP, LLC v. Sterling Holding, LLC, 231 So. 3d 517, 524 (Fla. 3d DCA 2017) (quoting *Shimek v. State*, 610 So. 2d 632, 634-35 (Fla. 1st DCA 1992)).

Also –

Although no provision of the Florida RICO Act explicitly provides that the “pattern of racketeering activity” includes a “continuity” requirement, in *Bowden v. State*, 402 So.2d 1173 (Fla.1981), the supreme court made it quite clear that the Florida RICO Act, similar to the federal act, includes a “continuity” requirement. Likewise, in *State v. Lucas*, 600 So.2d 1093 (Fla.1992), the court recently reaffirmed that requirement and approved the concepts expressed by the United States Supreme Court in *H.J., Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 109 S.Ct. 2893, 106 L.Ed.2d 195

(1989), concerning the continuity requirement and the proof necessary to establish it.

Shimek, id.

The proposed Complaint fails to plead these elements. Counts II, XVI, XXX, XLIV, and LVIII merely state conclusory allegations instead of specific factual allegations required to set forth the factual underpinnings of each element of a Florida RICO claim. Accordingly, these claims are dismissed without prejudice to file a curative complaint within twenty (20) days after the filing of this Order.

(C)-(F) Common law fraud claims.

As to the common law fraud claims against SFR, Ricky McGraw, Elite Claims Consultants, and Matthew McGraw, each Tower Hill Insurer must plead as to *each* such defendant, with particularity under rule 1.120(b), allegations meeting the elements of fraud: “(1) a false statement concerning a material fact; (2) the representor’s knowledge that the representation is false; (3) an intention that the representation induce another to act on it; and (4) consequent injury by the party acting in reliance on the representation.” *Wurtzebach v. Flooring Depot FTL, Inc.*, 384 So. 3d 251, 255 (Fla. 4th DCA 2024). “When fraud is asserted as a claim or defense, the facts and circumstances constituting the fraud must be pled with specificity, Fla. R. Civ. P. 1.120(b), and all essential elements of fraudulent conduct must be stated, i.e., that plaintiff relied to his detriment on a false statement concerning a material fact made with knowledge of its falsity and an intent to induce reliance.” *Peninsular Fla. Dist. Council of Assemblies of*

God v. Pan American Inv. And Devel. Corp., 450 So. 2d 1231, 1232 (Fla. 4th DCA 1984).

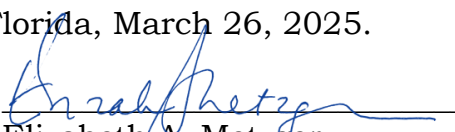
Additionally, because the Tower Hill Insurers have chosen to assert separate common law fraud counts as to each of the five aforementioned defendants, each common law fraud count must focus on the precise conduct by each defendant; the insurers cannot rely on allegations of conduct by the other defendants in order to establish the specific fraud committed by each of them. *See Eagletech Communications, Inc. v. Bryn Mawr Inv. Group, Inc.*, 79 So. 3d 855, 862 (Fla. 4th DCA 2012) (trial court properly dismissed complaint comingling separate and distinct fraud claims; fifth amended complaint improperly “lumped together” twenty-nine defendants without identifying specific statement made by each defendant). Here, the insurers improperly “incorporate” all of the allegations contained in paragraphs 1-102, which apply to various defendants, against each of the five separate counts against five distinct defendants.

Likewise, each insurer should plead facts with respect to each insurance claim belonging to it (as opposed to the other four insurers), providing information regarding whether the insurer alleges that the entire claim was fraudulent for lack of Irma-related damage, or the claim was fraudulently inflated, when the claim was paid, and the amount alleged as damages as to each claim. *Id.* at 863. Accordingly, these claims are dismissed without prejudice to file a curative amended complaint within twenty (20) days after the filing of this Order.

(G)-(N) Insurance fraud claims.

-Statutes (against SFR, Ricky McGraw, Elite Claims Consultants, Matthew McGraw, Jessica McGraw, McGraw Property Solutions, McGraw Asset Management, and Will Manatt), the insurers have failed to plead, as to *each* such defendant, that the defendant has been criminally adjudicated guilty of insurance fraud for each of the specific insurance claims upon which their complaints in this action are based. Section 817.234(5)(a) states, “Any insurer damaged as a result of a violation of any provision of this section **when there has been a criminal adjudication of guilt** shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorney fees, at the trial and appellate courts.” (Emphasis added.) Plaintiffs have failed to plead this element of an insurance fraud claim under the statute. Accordingly, these claims are dismissed without prejudice to file a curative complaint within twenty (20) days after the filing of this Order (if any such criminal adjudications have occurred).

DONE and ORDERED in Martin County, Florida, March 26, 2025.


Elizabeth A. Metzger
Circuit Judge

Copies served on the following via the e-portal:

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