



ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

COMMUNITY RESOURCING
INCORPORATED d/b/a OUR DAILY BREAD
FOOD AND RESOURCE CENTER,

Plaintiff/Respondent,

vs.

BERKSHIRE HATHAWAY SPECIALTY
INSURANCE, MESSER-BOWERS
COMPANY,

Defendants,

CHRIS HICKMAN, and
HAAG ENGINEERING COMPANY,

Defendants/Petitioners.

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**RESPONSE BRIEF OF PLAINTIFF AND RESPONDENT, COMMUNITY
RESOURCING INCORPORATED D/B/A OUR DAILY BREAD FOOD AND
RESOURCE CENTER**

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RESOURCE CENTER**

Plaintiff and Respondent, Community Resourcing Incorporated d/b/a Our Daily Bread Food and Resource Center (hereinafter "Community"), submits its Response to the Brief in Chief of Defendants and Petitioners Chris Hickman and Haag Engineering Company (the "Haag Petitioners"). The District Court of Payne County correctly denied the Haag Petitioners' Motion to Dismiss. Community respectfully requests that this Court affirm that ruling.

I. SUMMARY OF THE RECORD

Community's property at 701 E. 12th Street, Stillwater, Oklahoma, was damaged in a hailstorm on May 5, 2022. Community submitted a claim under its property insurance policy, Policy No. 47-SPK-260831-03, issued by Defendant Berkshire Hathaway Specialty Insurance ("Berkshire") through its agent, Messer-Bowers Company ("Messer-Bowers"). Following a prolonged and disputed adjustment process, during which Community's claims consultant, Stan

Williams of WCCES, documented functional hail damage across all three of Community's structures totaling over \$407,000, Berkshire retained Haag Engineering to conduct a further inspection of Community's property, which Chris Hickman performed on March 8 and April 12, 2024.

Community filed its original Petition on March 31, 2025, naming only Berkshire and Messer-Bowers as defendants. In its original Petition, Community alleged Breach of Contract and Breach of the Duty of Good Faith and Fair Dealing against Berkshire and Misrepresentation against Messer-Bowers. ROA No. 1. Community filed its Amended Petition on May 27, 2025, adding Chris Hickman and Haag Engineering as defendants and asserting two additional claims: Tortious Interference with Contract and Civil Conspiracy. ROA No. 2.

In its Amended Petition, Community alleges that Haag Engineering and Hickman contracted to inspect Community's property but, rather than conducting a truthful and objective inspection and issuing a fair report, produced findings designed to support Berkshire's conclusions. Community further alleges that Haag and Hickman did so to advance their own financial interests—namely, to secure future business and preserve their existing relationship with Berkshire by participating in the minimization or outright denial of legitimate insurance claims. ROA No. 2, ¶ 65.

Community further alleges that Hickman, Berkshire, and Haag Engineering, through their tortious actions, entered into a civil conspiracy with an objective to wrongfully minimize the damages to Community's property by agreeing to do so through their biased and outcome-oriented investigation into the claim that resulted in inaccurate findings and a sham engineering report that led to the underpayment of Community's claim. ROA No. 2, ¶ 69.

The Haag Petitioners filed their Motion to Dismiss on August 15, 2025, advancing the following arguments: (1) the character of Community's action is determined by the underlying facts, not the legal theory invoked, and this is fundamentally an insurance coverage dispute in which they merely inspected property and reported to Berkshire; (2) they owed no duty to Community, relying on their Agreement with Berkshire which expressly provided that no third party would acquire any legal or equitable right, remedy, or claim under the Agreement; (3) the tortious interference claim failed because a party acting in a representative capacity for a contracting party cannot, as a matter of law, interfere with that party's contract; and (4) the civil conspiracy claim failed both because Community had no viable direct tort claim against them and because insurer agents are barred from conspiracy liability, with Community's conspiracy allegation being merely a restatement of a bad-faith claim. ROA No. 3.

Community filed its Response on September 2, 2025, arguing: (1) Community was not asserting bad faith against the Haag Petitioners, making the bulk of their cited authority inapplicable; (2) the representative-capacity argument was misplaced because, while the Haag Petitioners attached their agreement with Berkshire, that agreement is not the contract at issue. The case law they cited stood only for the proposition that a party cannot interfere with its *own* contract, which is not the situation here, as the Haag Petitioners were strangers to the Berkshire-Community insurance policy; (3) the sham engineering report and financially motivated bias stated a viable tortious interference claim; and (4) the civil conspiracy claim independently survived because its underlying tortious act was the intentional interference with the Berkshire-Community contract—a direct, independent tort. ROA No. 4. The Haag Petitioners filed their Reply on September 11, 2025. ROA No. 5. The District Court heard the Motion on September 18, 2025, and denied it in its entirety, with the Journal Entry filed September 29, 2025. ROA No. 7.

The Haag Petitioners moved to certify the Journal Entry for interlocutory appeal on October 27, 2025. ROA No. 9. Community opposed certification on November 19, 2025. ROA No. 10. The Haag Petitioners replied on December 11, 2025. ROA No. 11. The District Court granted certification on January 30, 2026. ROA No. 12. This Court granted the Petition for Certiorari on March 30, 2026, and this timely Response Brief follows.

II. STANDARD OF REVIEW

The standard of review for an order dismissing a case for failure to state a claim upon which relief can be granted is *de novo* and involves consideration of whether a plaintiff's petition is legally sufficient. *Hayes v. Eateries, Inc.*, 1995 OK 108, ¶ 2, 905 P.2d 778, 780. When reviewing a motion to dismiss, the court must take as true all of the challenged pleading's allegations together with all reasonable inferences which may be drawn from them. *Hayes*, 905 P.2d at 780. "A pleading must not be dismissed for failure to state a legally cognizable claim *unless* the allegations indicate *beyond any doubt* that the litigant can prove *no* set of facts which would entitle him to relief." *Frazier v. Bryan Mem. Hosp. Authority*, 1989 OK 73, ¶ 13, 775 P.2d 281, 287 (emphasis in original). Furthermore, the burden to show the legal insufficiency of the petition is on the party moving for dismissal and a motion made under 12 O.S. § 2012(B)(6) must separately state each omission or defect in the petition; if it does not, the motion shall be denied without a hearing. *Indiana Nat'l Bank v. State of Oklahoma, Dep't. of Human Serv.*, 1994 OK 98, ¶ 3, 880 P.2d 371, 375. In this regard, motions to dismiss are usually viewed with disfavor under this liberal standard and to withstand a motion to dismiss it is not necessary for a plaintiff to either identify a specific theory of recovery or set out the correct remedy or relief to which he/she may be entitled. *Id.* at 375. The burden of demonstrating a petition's insufficiency is not a light one. *Id.*

Generally, a petition may be dismissed as a matter of law for two reasons: (1) lack of any cognizable legal theory, or (2) insufficient facts under a cognizable legal theory. *Crain v. Nat'l Am. Ins. Co.*, 2002 OK CIV APP 77, ¶ 6, 52 P.3d 1035, 1038. It is well settled that Oklahoma is a notice pleading state. The Pleading Code does not require a plaintiff to set out in detail the facts upon which the claim is based but merely requires “a short and plain statement of the claim showing that the pleader is entitled to relief; and ... [a] demand for judgment for the relief to which he deems himself entitled.” 12 O.S. § 2008(A)(1) & (2). This requirement is not onerous, but is merely to give an opposing party fair notice of the claim and the grounds upon which it rests. *Gunn v. Consol. Rural Water & Sewer Dist., No. 1, Jefferson County, Okla.*, 1992 OK 131, ¶ 13, 839 P.2d 1345, 1351.

The United States Supreme Court reaffirmed the liberal system of “notice pleading” in *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, et al.*, 507 U.S. 163 (1993). In *Leatherman*, the homeowners filed a complaint which alleged that searches of their home violated the Fourth Amendment and that municipal corporations failed to adequately train officers. The trial court dismissed the complaint, finding the plaintiffs had failed to meet the heightened pleading standard required in a civil rights suit alleging municipal liability under 42 U.S.C. § 1983. The Fifth Circuit affirmed. In reversing, the United States Supreme Court stated “the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is ‘a short and plain statement of the claim’ that will give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Leatherman*, 507 U.S. at 168 (quoting *Conley v. Gibson*, 355 U.S. 41, 47

(1957)).¹ Under this high standard, the trial court properly denied the Haag Petitioners' Motion to Dismiss.

III. ARGUMENTS AND AUTHORITY

A. **The Haag Petitioners' Bad Faith Authority Is a Red Herring Because Community Asserts No Bad Faith Claim.**

Similar to their Motion to Dismiss, the Haag Petitioners devote a significant portion of their Brief in Chief to arguing that, because they were retained by and acted for Berkshire, they owed no duty to Community and therefore cannot be liable to Community under any theory—relying on a line of Oklahoma authority holding that third-party adjusters and investigators retained by insurers do not owe duties to insureds and cannot be held liable for bad faith or negligence in the claims process. This argument, once more, fundamentally mischaracterizes Community's claims. Community's Amended Petition is clear: it is **not** making a claim for bad faith against the Haag Defendants. ROA No. 2. The Haag Petitioners concede as much in their own Brief. Brief in Chief, p. 19 (discussing Community's disavowal of bad faith). The Haag Petitioners' repeated invocation of bad-faith authority misses the mark entirely: Community is not asserting bad faith, and no amount of authority on that question resolves whether Oklahoma law permits claims for tortious interference and civil conspiracy against a third-party engineering firm that submits a sham report to defeat an insured's claim. The Haag Petitioners' further contention, that their retention by

¹ Since 12 O.S. § 2008 is adopted from its federal counterpart, Rule 8 of the Federal Rules of Civil Procedure, we may look to federal case law to aid in its interpretation and application. *See Heffron v. District Court Oklahoma County*, 2003 OK 75, ¶¶ 13 & 14, 77 P.3d 1069, 1076 (when a statute is adopted from the Federal Rules of Civil Procedure, courts may look to relevant federal case law to assist them in interpreting the pertinent state provision); *State ex rel. Tal v. City of Oklahoma City*, 2002 OK 97, ¶ 2, 61 P.3d 234, 240 (in that 12 O.S. § 2011 is adopted from its federal counterpart, Rule 11, we may look to federal case law to aid in its interpretation and application).

Berkshire confers blanket immunity from any claim by Community, finds no support in Oklahoma law and must be rejected.

The *Christian-Timmons-Trinity Baptist* line cited by the Haag Petitioners is rooted in a single legal concept: the implied duty of good faith and fair dealing arising from the insurance contract. *Christian* answered whether an insurer can be held liable in tort for bad faith refusal to pay a valid claim—establishing the implied duty of good faith and fair dealing owed by an insurer to its insured. *Christian v. Am. Home Assur. Co.*, 1977 OK 141, 577 P.2d 899. *Timmons* answered whether that same implied duty could be asserted against a stranger to the insurance contract, holding that it could not. *Timmons v. Royal Globe Ins. Co.*, 1982 OK 97, 653 P.2d 907. The Haag Petitioners build their Brief around *Trinity Baptist*, citing it more frequently and relying on it more extensively than any other authority. The Oklahoma Supreme Court in *Trinity Baptist* framed the issues there as: "1) whether a special relationship existed between an insured entity and an independent adjuster hired by the insurer, sufficient to subject the independent adjuster to the implied covenant of good faith and fair dealing arising under the insurance contracts; and 2) whether an independent insurance adjuster owes a legal duty to the insured such that it may be liable to the insured for negligence in its adjustment of the claim." *Trinity Baptist Church v. Brotherhood Mut. Ins. Services, LLC*, 2014 OK 106, ¶ 1, 341 P.3d at 77. The Oklahoma Supreme Court answered both questions no—but neither question is before this Court. Community does not allege that the Haag Petitioners owe it a duty of good faith and fair dealing arising from the insurance contract, nor does it allege mere negligence in the adjustment process.

Community alleges the Haag Petitioners reported findings that supported Berkshire's findings rather than conducting a truthful and fair inspection, and that the Haag Petitioners personally gained a financial incentive to further their own separate agenda of participating in the

minimization or denial of legitimate insurance claims to earn more business and keep the existing relationship with Berkshire. ROA No. 2, ¶ 65. Community alleges that Hickman and Haag Engineering's conduct was intentional, improper, and unfair. ROA No. 2, ¶ 66. These are allegations of deliberate, intentional misconduct for personal financial gain—entirely different in kind from the negligent or merely inadequate claim handling at issue in *Trinity Baptist*. Nonetheless, the Haag Petitioners treat *Trinity Baptist* as though it confers blanket immunity on third parties. It does not.

The United States District Court for the Northern District of Oklahoma confronted and rejected this precise argument in *Johnson v. State Farm Fire & Cas. Co.*, 2019 WL 5388521, at *4 (N.D. Okla. Oct. 22, 2019), where the court stated:

"It is true that a policy holder cannot sue his insurer's independent agent for negligence during the claims process. Here, however, the claim is for [an intentional infliction of emotional distress], an intentional tort. State Farm attempts to sidestep this distinction by construing *Trinity Baptist* and similar cases to mean that, when a dispute arises from the adjustment process, any wrongful conduct is attributable to the insurer as opposed to the adjuster. **It seems unlikely that the Oklahoma Supreme Court intended such a sweeping grant of immunity, as it would give adjusters free rein to engage in underhanded tactics during the adjustment process.**" (emphasis added).

The Haag Petitioners acknowledge *Henderson v. Day Engineering Consultants*, 2024 OK CIV APP 25, 560 P.3d 684, but address it in a single sentence in their Brief, arguing only that the Court of Civil Appeals "affirmed the dismissal of the only claim analogous to Community's claim against the Haag Petitioners," citing *Henderson*, ¶ 16, 560 P.3d at 689. Brief in Chief, p. 7. The Haag Petitioners selectively cite the paragraph confirming that *Trinity Baptist* extends to third-party consultants within the context of *negligence*, while ignoring the very next paragraph, which holds: "**Trinity and the other cases discussed above do not provide blanket immunity for all acts committed by an adjuster or third-party professional retained by an insurer to**

investigate a claim. Rather, the limited immunity provided in *Trinity* . . . does not protect a professional for acts taken unrelated to the claim." *Id.* at ¶ 17, 560 P.3d at 689 (emphasis added). In reaching that conclusion, the *Henderson* court expressly adopted the same reasoning from *Johnson* quoted above. The Haag Petitioners' position—that *Trinity Baptist* immunizes all conduct by a third-party investigator regardless of its nature, its motivation, and its departure from legitimate professional duties—is precisely the "sweeping grant of immunity" that *Johnson* and *Henderson* expressly rejected. Indeed, if Haag Petitioner's position was accepted by this Court, any third-party hired by an insurer would be immune from all claims such as trespass, assault, etc.

Most recently, the Northern District of Oklahoma confronted virtually identical facts in *Hooper v. Am. Strategic Ins. Corp.*, No. 24-cv-00612-CDL, 2025 WL 1140228 (N.D. Okla. Apr. 17, 2025). In *Hooper*, the plaintiff sued a third-party engineering consulting firm, Rimkus Consulting Group, Inc., and its employee, Timothy France, for tortious interference with contract and civil conspiracy after the firm conducted a "perfunctory and wholly lacking 'inspection'" of the insured property and reported inaccurate findings to justify denial of the claim. *Id.* at *1. The plaintiff alleged that the firm and its employee "personally gained by financial incentive to further their own separate agenda of participating in the denial of legitimate insurance claims to ingratiate themselves to" the insurer—language that mirrors Community's Amended Petition nearly word for word. *Id.* The defendants invoked *Trinity Baptist* to bar all claims arising from the adjustment process, but the court rejected that argument: the prior application of *Trinity Baptist* "in each of those cases was limited to claims of negligence, bad faith, and/or breach of contract in the evaluation of an insurance claim," and extending it to bar intentional tort claims would result in the very "sweeping grant of immunity" Oklahoma courts have consistently declined to adopt. *Id.* at *3-4. The court concluded that the tortious interference claim was "not clearly barred under

current Oklahoma law" and that the defendants had failed to show recovery was legally impossible. *Id.* at *6. *Hooper* confirms that Community's tortious interference claim is precisely the kind of intentional misconduct that survives *Trinity Baptist*.

In addition, the *Hooper* briefing makes that holding all the more instructive, because the Haag Petitioners are pressing the identical arguments that Rimkus and France raised and lost. In *Hooper*, the plaintiff's motion to remand directly confronted Rimkus's assertion that *Trinity Baptist* "immunizes TPAs like France for any and all conduct within the scope of assignment from an insurance company," and explained that *Trinity Baptist* "does not stand for such sweeping immunity"—it "was a case involving a plaintiff's claim against its insurer and the insurer's TPA for breach of contract, bad faith, and gross negligence." Plaintiff's Motion to Remand and Brief in Support at p. 6, *Hooper v. Am. Strategic Ins. Corp.*, No. 4:24-cv-00612-CDL, 2025 WL 1023676 (N.D. Okla. Jan. 8, 2025). In reply, the *Hooper* plaintiff further underscored that "the third party immunity recognized in *Trinity Baptist* is limited to claims of negligence, breach of contract and breach of the insurer's duty of good faith and fair dealing," and that "there are very good reasons why the Oklahoma Supreme Court would grant limited immunity for negligence while eschewing sweeping immunity for intentional torts." Plaintiff's Reply to Defendants' Joint Response to Plaintiff's Motion to Remand, at ¶ 2, *Hooper v. Am. Strategic Ins. Corp.*, No. 4:24-cv-00612-CDL, 2025 WL 1023677 (N.D. Okla. Feb. 12, 2025). On the representative-capacity defense specifically, the *Hooper* reply recognized that the general rule shielding agents from tortious interference liability "is subject to relevant, well-established exceptions, including situations where the agent does not act in good faith and commits independent torts or predatory acts for personal pecuniary gain"—precisely the conduct Community alleges here. *Id.* at ¶ 3. That the Haag Petitioners now

urge this Court to adopt the identical position that has been rejected at every turn—in *Hooper*, in *Johnson*, in *Henderson*, and in the district court below—is telling.

The appropriate inquiry is not whether the Haag Petitioners owe the implied covenant of good faith and fair dealing. They do not. Community asserts no such duty, and *Trinity Baptist* has no application here. The appropriate inquiry is whether Community has alleged viable claims for tortious interference with contract and civil conspiracy based on the Haag Petitioners' specific intentional misconduct. As shown below, it has.

B. Community States a Viable Claim for Tortious Interference with Contract

To state a claim for tortious interference with contract, a plaintiff must allege (1) that he had a contractual right that was interfered with; (2) that the interference was wrongful and malicious, and not justified, privileged, or excusable; and (3) that the interference proximately caused his damages. *Cohlmiya v. Ardent Health Services, LLC*, 448 F. Supp. 2d 1253, 1268 (N.D. Okla. Aug. 9, 2006) (citing *Waggoner v. Town & Country Mobile Homes, Inc.*, 1990 OK 139, 808 P.2d 649, 654); see also O.U.J.I. 24.1 (The plaintiff must establish he had a contract with a third party that the defendant knew or should have known about, that the defendant intentionally interfered with that contract using improper or unfair means, and that the plaintiff suffered damages as a result of the defendant's actions). In the Comments to Instruction No. 24.1, the Oklahoma Supreme Court noted “[t]he Restatement (Second) of Torts 2d recognizes two types of interference with contractual relations,” including “interference with the performance of contract by causing a party to the contract other than the plaintiff not to perform,” and “interference of a contract by preventing the plaintiff's own performance of the contract or by making the plaintiff's performance more expensive or burdensome.” O.U.J.I. 24.1, Comments (citing *Wilspec Techs., Inc. v. DunAn Holding Grp. Co.*, 2009 OK 12, ¶ 11, 204

P.3d 69, 73) (stating plainly that “[b]oth types of interference with contract are recognized in Oklahoma.”).

Community's Amended Petition satisfies all three elements. First, Community possessed a contractual right—its insurance policy with Berkshire—under which Berkshire was obligated to pay replacement cost coverage for hail damage to Community's buildings and roofs. ROA No. 2, ¶¶ 9-11. Second, the alleged interference was wrongful, malicious, and unjustified. The record evidence supports the conclusion that Hickman and Haag Engineering did not conduct an independent investigation. For example, on March 8 and April 12, 2024, Hickman and Haag Engineering found even less damage than Berkshire's prior retained consultant, Halliwell, concluding that the metal roof panels of all three buildings sustained only cosmetic dents, and that the four hail-caused dents per roofing square did not fracture the TPO. ROA No. 2, ¶ 39. When Community's consultant Stan Williams emailed Hickman requesting written confirmation that his findings represented his independent conclusions and had not been influenced in any way by Sedgwick or Berkshire, Hickman did not respond to Williams but instead forwarded Williams' email directly to Berkshire. ROA No. 2, ¶ 40. This conduct was consistent with the broader pattern alleged throughout the record: Berkshire engaged in an outcome-oriented investigation through the utilization of biased engineers designed to reduce the amount of money paid to Community. ROA No. 2, ¶ 52(d). The Amended Petition further alleges that Haag Engineering and Hickman personally gained a financial incentive to further their own separate agenda of participating in the minimization or denial of legitimate insurance claims to earn more business and keep their existing relationship with Berkshire. ROA No. 2, ¶ 65. Third, the interference proximately caused damages: as a direct and proximate result of Hickman and Haag Engineering's interference, Community has

sustained financial losses, including the underpayment of its legitimate insurance claim. ROA No. 2, ¶ 67.

The Haag Petitioners cite *Voiles v. Santa Fe Minerals*, 1996 OK 13, 911 P.2d 1205, for the proposition that there can be no claim for tortious interference with contract against an entity whose actions are taken pursuant to a relationship with one of the parties to the contract—that is, an entity "cannot be liable for wrongfully interfering with a contract if it was acting in a representative capacity for a party to that contract." Brief in Chief, pp. 21-22. *Voiles*, ¶ 18, 911 P.2d at 1210. The representative immunity recognized in *Voiles* was expressly conditioned on the agent acting *on behalf of* the contracting party—not for its own interests. The court grounded its holding in *Ray v. American National Bank*, which it quoted directly: "Bank, however, **was at all times** acting on behalf of Young. Bank could not wrongfully interfere with a contract concerning which it was acting in a representative capacity for a party." *Voiles*, ¶ 18, 911 P.2d at 1210 (quoting *Ray v. Am. Nat'l Bank & Trust Co.*, 1994 OK 100, 894 P.2d 1056, 1060) (emphasis added).

The Haag Petitioners' situation is fundamentally different. Berkshire retained the Haag Petitioners to conduct an engineering inspection. It did not authorize them to tailor their findings to minimize legitimate claims in order to secure continued business. Community alleges that the Haag Petitioners gained a financial incentive to further their **own** separate agenda of participating in the minimization of legitimate insurance claims to earn more business and keep the existing relationship with Berkshire. ROA No. 2, ¶ 65. Moreover, an agent who acts with improper motive and for private financial gain beyond the scope of a legitimate agency relationship forfeits any protection under *Voiles*. See also *Rogers v. Brummett*, 1923 OK 711, 220 P. 362 ("If the agent, acting within the scope of his authority. ... steps aside to engage in a tortious act to the injury of property or personal rights of another, the agent becomes liable for the injury done.").

Furthermore, the representative capacity defense is not absolute—it is conditioned on the agent acting in good faith. In *Hawk Enterprises, Inc. v. Cash America International, Inc.*, 2012 OK CIV APP 66, ¶ 16, 282 P.3d 786, 793, the Oklahoma Court of Civil Appeals recognized that interference by corporate officers and directors is privileged only when "undertaken in good faith and for a bona fide organizational purpose." Where an agent instead acts in bad faith and contrary to the interests of the employer, no such privilege attaches and the agent is not exempt from liability for interference with contract. *Id.* at ¶ 17, 282 P.3d at 793. The Amended Petition alleges precisely that: although Haag and Hickman did advance Berkshire's financial interests by interfering with Community's insurance contract, they simultaneously pursued their own separate financial agenda—participating in the minimization of Community's claim to earn more business and preserve their relationship with Berkshire, not solely for Berkshire's benefit. ROA No. 2, ¶ 65.

Loven v. Church Mut. Ins. Co., 2019 OK 68, 452 P.3d 418, confirms that representative immunity is not unlimited. The court held that "the element of intentional interference clearly requires a showing of bad faith," and that "[t]he interference must be the purpose of the tortfeasor's act, and their motive must include a desire to interfere and disrupt the others' prospective economic business advantage." *Id.* at ¶ 21, 452 P.3d at 426. Immunity was upheld in that case only because "no evidence tend[ed] to show that either Church Mutual or Hanes acted with the intentional purpose to interfere or in bad faith," and there was no "evidence that any interference was done with an improper, wrongful, or malicious motive." *Id.* at ¶ 22, 452 P.3d at 426. The inverse follows directly: where such evidence exists—or has been plausibly alleged—immunity does not apply. Here, the Amended Petition does more than allege improper motive; it alleges a deliberate, outcome-oriented scheme designed to minimize Community's claim rather than render an honest assessment. To add, the bad faith relevant to tortious interference concerns improper motive or

means in interfering with another's contractual relationship—not the breach of an insurer's duty of good faith and fair dealing, which forms the basis of Community's separate claims against Berkshire.

Lastly, *Tuffy's, Inc. v. City of Okla. City*, 2009 OK 4, 212 P.3d 1158, provides the foundational framework for the bad faith requirement in tortious interference claims. The court held that "[o]ne has the right to prosecute a lawful business without unlawful molestation or unjustified interference from any person, and any malicious interference with that business is an unlawful act and an actionable wrong." *Id.* at ¶ 14, 212 P.3d at 1165. The elements of such a claim are: "(1) interference with a business or contractual right; (2) malicious and wrongful interference that is neither justified, privileged, nor excusable; and (3) damage proximately sustained as a result of the interference." *Id.* The court further held that "[t]he element of malice . . . is defined as an unreasonable and wrongful act done intentionally, without just cause or excuse," and that this element "clearly requires a showing of bad faith." *Id.* Critically, the court confirmed that "[t]he terms 'malicious interference,' 'intentional interference,' and 'tortious interference' with contract or business relations have been used interchangeably in Oklahoma jurisprudence, and do not designate distinct torts." *Id.* at ¶ 15, 212 P.3d at 1165. The bad faith requirement thus applies with equal force to Community's tortious interference claim here and is clearly apparent as alleged.

C. Community States a Viable Civil Conspiracy Claim

"A civil conspiracy consists of a combination of two or more persons to do an unlawful act, or to do a lawful act by unlawful means." *Brock v. Thompson*, 1997 OK 127, ¶ 39, 948 P.2d 279, 294. A civil conspiracy claim "is not an independent, actionable claim; there must be an underlying tortious act." *Transportation Alliance Bank, Inc. v. Arrow Trucking Co.*, 2011 WL 221863, at *6 (N.D. Okla. Jan. 21, 2011). A malicious wrong is a tort comprised of intentional acts

calculated in the ordinary course of events to damage without just cause or excuse which causes damage to another. *Fulton v. People Lease Corp.*, 2010 OK CIV APP 84, ¶ 42, 241 P.3d 255 (citing *Mangum Electric Co. v. Border*, 1923 OK 547, ¶ 9, 222 P. 1002, 1005). The Haag Petitioners argue that, because Community has no viable direct tort claim, the conspiracy claim necessarily fails. This argument is unavailing. Community has a viable claim for tortious interference as demonstrated above. The predicate for conspiracy is satisfied.

The Haag Petitioners also invoke *Gruenberg v. Aetna Insurance Co.*, 9 Cal.3d 566, 108 Cal.Rptr. 480, 510 P.2d 1032 (1973), for the proposition that agents of insurers cannot be held accountable on a conspiracy theory. The *Gruenberg* court stated that "as agents and employees of the defendant insurers, they cannot be held accountable on a theory of conspiracy." *Id.* at 1039. But this language from *Gruenberg* was directed at the conspiracy claim as an alternative vehicle for a *bad faith* claim—the very claim Community has expressly disclaimed. *Gruenberg* addressed agents acting within the scope of normal claims adjustment; it did not address agents who fabricate engineering reports for personal financial gain. The *Gruenberg* conspiracy holding is co-extensive with the *Gruenberg* bad-faith holding: when the underlying tortious act is not a bad-faith claim but rather an independent intentional tort, neither the bad-faith immunity nor the *Gruenberg* conspiracy immunity applies.

The Haag Petitioners further analogize Community's conspiracy allegation to the "general collusion" allegation rejected in *Trinity Baptist*. Brief in Chief, p. 25. There, the court stated that *Trinity Baptist's* "allegations [of] general collusion between Brotherhood and Sooner to manipulate estimates and bring down the cost of repairs" were "essentially a restatement of *Trinity Baptist's* claims that Sooner acted in bad faith rather than effective indications that Sooner acted sufficiently like an insurer to create a special relationship." *Trinity Baptist*, at ¶ 17, n. 5, 341 P.3d at 81.

Community's allegations are categorically different. Community does not allege general collusion as a stand-in for bad faith. It alleges a specific, financially motivated scheme: Hickman, Berkshire, and Haag Engineering, through their tortious actions, entered into a civil conspiracy with an objective to wrongfully minimize the damages to Community's property by agreeing to do so through their biased and outcome-oriented investigation into the claim that resulted in inaccurate findings and a sham engineering report that led to the underpayment of Community's claim. ROA No. 2, ¶ 69. The Haag Petitioners' "bad faith" argument is one of their own invention—Community never raised it. It finds no support in the pleadings. Community's conspiracy claim rests on a single predicate act: tortious interference with contract. That has been the theory from the Amended Petition through this briefing, and nothing in the record supports the Haag Petitioners' attempt to reframe it otherwise.

Tanique, Inc. v. State ex rel. Okla. Bureau of Narcotics & Dangerous Drugs, 2004 OK CIV APP 73, 99 P.3d 1209, establishes that a civil conspiracy claim lives or dies with its underlying unlawful act—and here, that act is firmly pleaded. The court held that "[c]ivil conspiracy itself does not create liability" and that "[a] conspiracy between two or more persons to injure another is not enough; an underlying unlawful act is necessary to prevail on a civil conspiracy claim." *Id.* at ¶ 38, 99 P.3d at 1218. The court further explained that conspiracy liability depends on whether "the State be liable on the 'underlying unlawful act[s]' alleged by the plaintiffs"—and dismissed the conspiracy claim in that case only because every underlying tort claim had already failed. *Id.* at ¶ 39, 99 P.3d at 1219. Here, the opposite is true. Community's civil conspiracy claim is predicated on tortious interference with contract—a viable, well-pleaded underlying unlawful act. Because the tortious interference claim survives, so too does the conspiracy claim that flows directly from it.

Brock v. Thompson, 1997 OK 127, 948 P.2d 279, establishes both the definition of civil conspiracy and the precise condition under which it fails—and that condition is absent here. The court held that "[a] civil conspiracy consists of a combination of two or more persons to do an unlawful act, or to do a lawful act by unlawful means," and that "[t]o be liable[,] the conspirators must pursue an independently unlawful purpose or use an independently unlawful means." *Id.* at ¶ 39, 948 P.2d at 294. The court further explained that "[t]here can be no civil conspiracy where the act complained of and the means employed are lawful." *Id.* The conspiracy claim failed in *Brock* only because the petitioners' underlying conduct was constitutionally protected and therefore lawful. *Id.* at ¶ 42, 948 P.2d at 295. Here, by contrast, the underlying act is neither lawful nor protected—Haag and Hickman combined with Berkshire to deliberately minimize Community's insurance claim, employing independently unlawful means in pursuit of an independently unlawful purpose.

Additionally, the Amended Petition includes significant additional factual context supporting the coordination alleged. Hickman's decision to forward Williams' independence inquiry directly to Berkshire rather than respond to it, ROA No. 2, ¶ 40, is not the behavior of a neutral expert. The Amended Petition also places Haag's conduct in broader context: in 2006, State Farm suspended its utilization of Haag in part due to an Oklahoma jury finding that State Farm used Haag reports to maliciously deny policyholder claims, and Haag was sued for conspiring with State Farm by providing erroneous or false information that negatively impacted State Farm policyholders' claims. ROA No. 2, ¶ 34. This is not an anomaly—it is a pattern that makes Community's conspiracy theory more than facially plausible. At the pleading stage, all reasonable inferences must be drawn in Community's favor, and these allegations more than satisfy that standard.

D. The Double-Recovery Concern Is Premature and Overstated

The Haag Petitioners warn that allowing Community's claims would create "double recovery." Brief in Chief, p. 18. The Oklahoma Supreme Court in *Trinity Baptist* expressed concern that "the existence of a separate legal duty on the part of the adjuster in these circumstances would allow for potential double recovery, permitting the insured to recover in tort both for **breach of contract or breach of the duty of good faith and fair dealing** by the insurer—caused by an adjuster's negligent conduct—and from the adjuster for the same conduct." *Trinity Baptist*, at ¶ 31, 341 P.3d at 86 (emphasis added)..

That concern arose in *Trinity Baptist* in the context of potentially duplicating a bad-faith claim against the insurer—two parties being separately liable for the same negligent claim-handling conduct. The concern has no comparable force here. Community's claims against Berkshire—breach of contract, bad faith, and civil conspiracy—arise from Berkshire's failure to pay what the policy requires, its overall handling of the claim, and its participation in the scheme to minimize Community's losses. Community's claims against the Haag Petitioners stem from a single wrong: the deliberate production of a fraudulent engineering report for personal financial gain. That misconduct gives rise to both their independent tortious interference with Community's policy and their coordination with Berkshire in the broader conspiracy. Courts routinely assess damages against multiple defendants for distinct acts causing overlapping harm; the concern about duplication can be managed through jury instructions and apportionment at trial, not by dismissing valid claims at the pleading stage.


In addition, Oklahoma law permits a plaintiff to simultaneously maintain alternative or inconsistent claims against different defendants. Okla. Stat. tit. 12, § 2008(E)(2) specifically allows a plaintiff to state alternative or inconsistent claims, and Community is permitted to simultaneously

maintain a claim against Berkshire for engaging the Haag Petitioners specifically to obtain a predetermined outcome while also asserting a claim against the Haag Petitioners for a sham report that induced Berkshire to underpay Community's claim.

IV. CONCLUSION

WHEREFORE, Community Resourcing Incorporated d/b/a Our Daily Bread Food and Resource Center respectfully requests that this Court affirm the Order of the District Court of Payne County denying the Haag Petitioners' Motion to Dismiss.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that on this 7th day of May, 2026, a true and correct copy of the above and foregoing was sent via email and United States Mail to:

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