IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-11593-QQ

LEIGH ANN YOUNGBLOOD-WEST,
Plaintiff - Appellant,

v.

AFLAC INCORPORATED, DANIEL P. AMOS, WILLIAM LAFAYETTE AMOS, JR., CECIL CHEVES, and SAMUEL W. OATES,
Defendants - Appellees.

On Appeal from the United States
District Court for the Middle District of Georgia

APPELLANT'S REPLY BRIEF (REDACTED)

September 19, 2019

Dimitry Joffe
JOFFE LAW P.C.
765 Amsterdam Avenue, 2C
New York, New York 10025
Tel: (917) 929-1964
Email: dimitry@joffe.law
Counsel to Plaintiff-Appellant

CERTIFICATE OF INTERESTED PERSONS

Pursuant to the Eleventh Circuit's Rule 26.1, the undersigned counsel for Plaintiff-Appellant Leigh Ann Youngblood-West discloses the following known trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this particular case or appeal:

Aflac Incorporated (NYSE: AFL)

Alston & Bird LLP

Amos, Daniel

Amos Jr., William L.

Bogan III, James

Bondurant, Mixon & Elmore LLP

Boone, Brian D.

Bruce, Gary O.

Butler Jr., James E.

Butler, Wooten & Peak LLP

Carter, Jason J.

Cheves, Cecil

Clark Jr., James C.

Cook, Nicholas J.

Deneen, Lee

Fisher, Jeffrey H.

Floyd, John E.

Garrett Jr., Curtis A.

Gill, Mary C.

Grant, James C.

Harris, Alvin L.

Helmich, David

Hinds, Russel E.

Joffe, Dimitry

Joffe Law P.C.

Kilpatrick Townsend & Stockton LLP

Land, Clay D. (U.S.D.J.)

Land, Shannon F.

Laney, Davis A.

Lexstone Fund II L.P.

Oates, Samuel W.

Page, Scrantom, Sprouse, Tucker & Ford P.C.

Pryor, T.C. Spencer

Reid Jr., E. Lowry

Scrantom Jr., William G.

Siegel, David A.

Smith, Michael D.

Synovus Financial Corporation

Versus Funding Partners L.P.

Waldrep, Joseph L.

Waldrep, Mullin & Callahan, LLC

Wooten, Joel

Youngblood-West, Leigh Ann

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other authorities

ARGUMENT

I. False charges of extortion

Aflac's and Dan Amos' Response Brief starts with the sentence "[l]ast year, Dimitry Joffe – Appellant Youngblood-West's counsel – tried to extort $50 million from Aflac Incorporated and its CEO Dan Amos," (Aflac's Brief Pg. 1), and goes on to mention "extort[ion]" or "shakedown" ten more times, dedicating more pages to the extortion section than to any other in its Statement of the Case (id. at Pg. ii). By the "extortion" attempt Appellees mean the settlement demand letter sent by Ms. Youngblood-West's counsel to counsel for Aflac and Dan Amos on March 16, 2018, calling it as such in their March 23, 2018 reply.

This dishonest and offensive *ad hominem* attack cannot go unanswered even though it detracts, by design, from the merits of Ms. Youngblood-West's appeal. The 7-page settlement demand letter (BA Dkt. 2-3) speaks for itself as it introduces Ms. Youngblood-West, one of the many [redacted] [redacted] Dr. Amos and his enablers; summarizes the factual basis of Ms. Youngblood-West's case; advises that her counsel had been instructed "to draft and file a civil RICO complaint against Aflac and all of its affiliates named above based on their conspiracy that sought to silence Ms. Youngblood-West and other [redacted] of Dr. Amos' [redacted] [redacted], to conceal his [redacted], and to deprive [redacted] of their rightful claims and remedies," and concludes that "[i]n advance of the filing of that

complaint, I am authorized by Ms. Youngblood-West to make a settlement demand for $50 million (FIFTY MILLION DOLLARS) to achieve an amicable resolution of this matter, if consummated within ten days from the date of this letter." End of the letter.

Other than the prospects of civil litigation, there are no hints of any threats in the letter, express or implied. "[A] threat of litigation, by itself, is not unlawful. For this reason, we find that, based on the authority of other courts that have examined similar issues, mere 'threats to sue cannot constitute criminal extortion.'" United States v. Pendergraft, 297 F.3d 1198, 1205 (11th Cir. 2002). "[W]e are troubled by *any* use of this federal criminal [extortion] statute to punish civil litigants." Id. at 1208 (emphasis original). See also Buckley v. DIRECTV, Inc., 276 F. Supp. 2d 1271, 1275-1276 (N.D. Ga. 2003) ("[T]he Court is not aware of any authority holding that a demand to settle a claim before pursuing litigation amounts to extortion."); Waldbon v. George Weston Bakeries Inc., 570 F.3d 5, 10 (1st Cir. 2009) ("Trying to transmogrify what was obviously a settlement demand in a pending civil case into an act of extortion is like trying to fit a square peg into a round hole. If given widespread credence, that tactic would severely impede the salutary policies favoring settlements in civil actions."); State v. Cohen, 807 S.E.2d 861, 869 n.9 (Ga. 2017) ("[A] demand letter that merely threatens a lawsuit in connection with that potential litigation could not serve as a proper basis for a

charge of extortion, as a party's right to pursue such litigation is protected by the First Amendment."); Golden v. Dodge-Markham Co., Inc., 1 F. Supp. 2d 1360, 1364 (M.D. Fla. 1998) ("A settlement demand is typically a part of the civil litigation process.").[1]

Considering the uniformly recognized legality and typicality of settlement demands in civil practice, Aflac's and Dan Amos' cry of "extortion" is nothing but an oft-repeated malicious falsehood intended to discredit and oppress their victim and her counsel. This false charge also served as Appellees' pretext to threaten Ms. Youngblood-West and her counsel with criminal prosecution in an effort to stop them from filing this case.

Aflac's and Dan Amos' March 23, 2018 response to the settlement demand letter (Doc. 26-5) also speaks for itself as it threatens criminal prosecution for extortion, Rule 11 sanctions, defamation lawsuits, stock manipulation charges, disqualification and ethics complaints – all to intimidate Ms. Youngblood-West and her counsel into abandoning her claims.

[1] Courts have recognized that a settlement demand amount could be viewed either as "an honest assessment of damages" or as merely "posturing by counsel seeking to stake out a position for settlement purposes." Golden, 1 F. Supp. 2d at 1364-65. Even if viewed as excessive and "seeking to stake out a position for settlement purposes" -- which it was not, as the complaint itself prays for twice that amount in damages (Doc. 26 at p. 73) -- the amount alone cannot turn the demand letter into "extortion."

II. Plausible allegations of Appellees' [redacted] cover-up

"RICO was designed -- at least in part -- to prevent an individual engaged in racketeering activities from increasing his power to do wrong by taking over an apparently legitimate firm . . . [and] 'us[ing] the firm's resources, contacts, facilities, and appearance of legitimacy *to perpetrate more, and less easily discovered, criminal acts than he could do in his own person*.'" So stated this Court in Ray v. Spirit Airlines, Inc. 836 F.3d 1340, 1357 (11th Cir. 2016), quoting Fitzgerald v. Chrysler Corp., 116 F.3d 225, 227 (7th Cir. 1997) (emphasis added throughout unless indicated otherwise).

Ms. Youngblood-West's complaint alleges exactly this type of illegal scheme that RICO was designed to prevent as it sets out [redacted] committed by Dr. Amos, Aflac's then Chief Medical Director, Senior Vice President, and Board member, and a member of its founding family, including [redacted] (Doc. 26 ¶ 3), and the long-running cover up of those [redacted] by Aflac and the individual Appellees, marked by extraordinarily vindictiveness compared even to the [redacted].

The complaint alleges that Dr. Amos' senior Aflac position had provided him "[redacted]. Dr. Amos aligned himself with the wealth and power

of the Aflac-Amos name, and used it as a tool to establish his relationships with employees and their spouses encouraged by Aflac, and to develop a patient base for his practice, [redacted]." Doc. 26 ¶ 92. "Dr. Amos attended many of Aflac's corporate functions, parties and conventions where he would mingle and cultivate some of his patient population, [redacted]. Aflac encouraged its employees and their family members to use Dr. Amos' medical services, and many, including Plaintiff, did." Doc. 26 ¶ 91.

In 1987, when Dr. Amos was [redacted], Aflac's then CEO John Amos and its Board member William Amos, Sr., Dr. Amos' uncle and father, with the knowledge of Dan Amos and the assistance of Aflac's outside counsel Cecil Cheves, helped Dr. Amos [redacted], and destroying incriminating evidence. Doc. 26 ¶ 6.[2]

[2] Soon thereafter, Aflac and Dan Amos started to harass Ms. Youngblood-West's late husband Scott Youngblood, a decorated veteran of the Vietnam War where he had served as a Green Berets Captain and earned Bronze Star and Purple Heart during his two tours of duty. The harassment forced Mr. Youngblood into resignation in 1989 despite a stellar and loyal 13-year career as Aflac's corporate pilot, in turn forcing the Youngbloods into dire financial straits from which even an unfair settlement with unconscionable terms might have looked like the only escape at the time, particularly after Mr. Youngblood was diagnosed with cancer (melanoma) for the first time in 1992, with another recurrence in 1993. Doc. 26 ¶

In 1992, when [redacted] surfaced on Dan Amos' own watch as Aflac's CEO, Appellees proceeded to intimidate and defraud [redacted] (including the Youngbloods) into silence, [redacted]. Doc. 26 ¶ 136. Even before the Youngbloods' signatures were dry on the 1992 Release, Appellees disclosed the settlement to the Bank, which immediately sued Ms. Youngblood-West for the settlement money, clawing back [redacted] and costing Ms. Youngblood-West [redacted] in legal fees to defend herself (Doc. 26 ¶ 15), effectively denying Ms. Youngblood-West an opportunity to return the consideration and rescind the Release at the time. The Bank's Page, Scrantom lawyers (Cheves' partners) then threatened her with incarceration, to show her that they meant business and to teach her a lesson for life never to cross them again.

Frightened by her powerful adversaries, Ms. Youngblood-West was in no position to "assess whether she had everyone she thought should be held accountable at the table" in 1993, as the District Court concluded contrary to the complaint's allegations, Doc. 88 at 21 (and which assessment would have done her

57. (When his cancer returned for the third and final time in 2001 and Ms. Youngblood-West asked Dr. Amos' successor at Aflac Dr. Purdom if the company would help fly her husband to John Wayne Hospital, Aflac flatly refused, with Dr. Purdom telling Ms. Youngblood-West that she should realize Scott was going to die. Doc. 26 ¶ 118.)

little good anyway in those circumstances); nor did she know then about Dr. Amos' behind-the-scene protectors. And because Appellees concealed the true facts of [redacted], it took Ms. Youngblood-West years of training and practice as an ER nurse to figure out that [redacted] The DEA Resource Guide, Drugs of Abuse, 2017." Doc. 26 ¶ 4.

In the meantime, Appellees' 1987 and 1992-93 cover up had allowed Dr. Amos to maintain his medical licenses in Texas and Georgia for 20 years [redacted] even though, as Dr. Amos himself admits, [redacted] Doc. 26-1 Pgs. 46-47.

Dr. Amos was [redacted]. See Doc. 26-1 at p. 12, where Dr. Amos volunteered that [redacted]. In [redacted] This [redacted] coupled with the additional

facts peculiar to Dr. Amos makes it entirely plausible and indeed probable that he [redacted].

In 2016, Dr. Amos revealed to Ms. Youngblood-West how his powerful Aflac-Amos [redacted] that he "could have gone to" for the [redacted] (Doc. 26-1 Pgs. 42, 48); told Ms. Youngblood-West that "[redacted]; and warned her to "be careful" about revealing the truth. Doc. 26-1 Pg. 48. Beneath the civic veneer of their polite conversation this was, in substance, a plausible and credible threat to keep her mouth shut. What other conceivable reason could there be for Dr. Amos to insist on that meeting? [redacted], see Doc. 26-1.

By 2018, all veneers were off anyway as Aflac and Dan Amos repeatedly threatened to prosecute Ms. Youngblood-West and her counsel criminally in response to their settlement demand letter, while Dr. Amos was seeking a TRO from the District Judge at his home on a Sunday midnight. BA Dkt. 12 Pg.3.

Aflac and Dan Amos nonetheless argue that Ms. Youngblood-West "did not plead particularized facts suggesting that Aflac or Dan Amos did anything wrong." Aflac's Brief at 24-25. In particular, Appellees claim that "the only possible mention of Dan Amos in the (unverified) transcript of that conversation is that

'Danny knew,'" (Aflac's Br. at 25 n.9), and "[t]hat statement is vague and nondescript: it does not reveal what 'Danny knew,' when he knew it, or how Dr. Amos knew that 'Danny' knew it." Id. at 24 n.8.

Aflac and Dan Amos misrepresent the record. That "Danny knew" is not "the only possible mention of Dan Amos" in the transcript: Dr. Amos also explained that "[redacted]" Doc. 26-1 Pgs. 19-20. This answers Appellees' questions "how Dr. Amos knew that 'Danny' knew it" – because Dr. Amos himself [redacted] – and "when" Dr. Amos [redacted].

Furthermore, in response to Ms. Youngblood-West's question how Dr. Amos' successor Dr. Purdom knew about [redacted] mentioned by Oates in the course of the 1992 settlement, Dr. Amos stated: "if he did, somebody told him. I don't know if Danny would have told him or -- like I said, they were very, very close." Doc. 26-1 Pg. 21. A reasonable inference from this statement is that Dan Amos himself knew about [redacted] (regardless of whether it was he who had told Dr. Purdom about it).

Aflac and Amos then state: "From that vague phrase ["Danny knew"], Youngblood-West asked the district court to infer that Dan Amos [redacted]." Aflac's Brief Pg.

25. As shown, Ms. Youngblood-West alleges more than just one "vague phrase," and a reasonable inference from the alleged facts is that Dan Amos -- just like John Amos and William Amos, Sr., before him -- has indeed kept secret Dr. Amos' [redacted] for 30 years of his tenure as Aflac's CEO.[3] "[O]f course, a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely." Bell Atl. Corp. v. Twombly, 550 U.S. 554, 556 (2007).

Aflac and Dan Amos also argue that their 2018 threats of criminal prosecution cannot constitute witness intimidation and retaliation, citing Town of Gulf Stream v. O'Boyle, 654 F. App'x 439, 444 (11th Cir. 2016) (Aflac's Brief at p. 27). O'Boyle is distinguishable because it involves allegations not of witness intimidation but of extortion. Cf. Pendergraft, 297 F.3d at 1207 ("The law jealously guards witnesses who participate in judicial proceedings; witnesses

---

[3] Cf. Camp v. Eichelkraut, 246 Ga. App. 275, 285 (Ga. Ct. App. 2000) "[redacted]."

Appellees' actions go way beyond a mere failure to report [redacted] to the authorities, and constitute an active coverup [redacted]. (Ms. Youngblood-West herself, upon learning of [redacted], reported them to the local FBI office, albeit without any effect). Doc. 111-1.

should be 'unafraid to testify fully and openly.'"). O'Boyle also does not involve threats of *criminal* prosecution, whereas this Court was "troubled by *any* use of this federal criminal [extortion] statute to punish civil litigants," Pendergraft, 297 F.3d at 1207.[4]

III. Timeliness of the complaint

A. Discovery of the injury in 2016

Ms. Youngblood-West alleges that she did not discover her injuries until September 2016, and could not have discovered them earlier because her powerful adversaries thwarted her efforts at every turn with lies and threats. Appellees' arguments that she had learned about her injuries earlier are contrary to the pleaded facts and the reasonable inferences that should be drawn in Ms. Youngblood-West's favor.

First, Appellees' claim about the sufficient "storm warnings" in 1984 are contrary to the complaint's allegations that Dr. Amos deliberately [redacted]. Moreover, while Ms.

[4] Appellees also argue that the predicate acts of witness intimidation and obstruction of justice "fail because 'federal obstruction and witness intimidation claims are only applicable to federal proceedings. Green Leaf Nursery v. E.I. DuPont De Nemours & Co., 341 F.3d 1292, 1307 (11th Cir. 2003)." Appellees must have lost sight of the fact that this federal RICO Action pending in a federal court is a "federal proceeding," which Appellees' threats against Ms. Youngblood-West, "a witness involved in a federal proceeding," intended to obstruct.

Youngblood-West was suspicious about [redacted], she attributed it to her [redacted] and called Dr. Amos' office to inquire, in response to which Dr. Amos [redacted] (Doc. 26 ¶¶ 110-11). These lies caused Ms. Youngblood-West to continue seeing Dr. Amos as her OB/GYN doctor, [redacted] (id. ¶ 27). It is reasonable to infer that Mr. Youngblood-West would not have done so had she known the truth about [redacted], or at least thought it probable.

Second, had Ms. Youngblood-West known about Dr. Amos' 1987 [redacted], she could have reasonably concluded that [redacted] her in 1984, and could have learned about her injuries then. Appellees, however, [redacted], and all Ms. Youngblood-West knew was a rumor that [redacted]. Doc. 26 ¶ 115.

Third, Appellees' argument that Ms. Youngblood-West learned about her injuries in 1992 when she became aware of [redacted] is contrary to the Complaint's allegations that Oates in collusion with Cheves prohibited her from contacting and obtaining any information from the [redacted], while lying to her about her potential claims and destroying incriminating evidence, so that Ms. Youngblood-West was not able to learn the truth about her injuries at that time. Doc. 26 at ¶ 7.

Fourth, Appellees' argument that Ms. Youngblood-West in 1992 "had learned about '[redacted] in Defendant Oates' possession'" (Aflac's Brief at 15) is contrary to the Complaint's allegations that "[d]uring one of Plaintiff's visits to Dr. Purdom around the time of the 1992-93 settlements, Dr. Purdom asked her whether she knew anything about [redacted] in Defendant Oates' possession related to the Dr. Amos case. Plaintiff responded that she was *not aware* of any [redacted]," Doc. 29 ¶ 170, nor did Dr. Purdom elaborate or confirm its existence.

Fifth, Dr. Amos' argument that Ms. Youngblood-West had learned in 1992 that "'[redacted]' . . . had been found in Dr. Amos' abandoned office" is contrary to the Complaint's allegations that she learned about the [redacted] only in 2016 from Georgette Shaw. Doc. 26 ¶¶ 40, 131.

Finally, Appellees' argument that by 1993 Ms. Youngblood-West "had sufficient information . . . to assess whether she had everyone who she thought should be held accountable at the table" is contrary to the Complaint's allegation that the 1993 Release was entered into as a result of the Bank's action when Cheves' law firm Page, Scrantom, counsel to Dr. Amos, Aflac and the Bank, threatened Ms. Youngblood-West with incarceration in their vicious pursuit of her 1992 settlement money, forcing her to retain another lawyer to defend herself against the Bank and to enter into another [redacted] under duress. Indeed,

the Bank commenced its action immediately following the 1992 settlement (Doc. 127-2 Ex. 3), and no new relevant information became available to her by the time of the 1993 Release.[5]

Moreover, as the Second Circuit stated in Koch v. Christie's International PLC, relied upon by Appellees for their "storm warning" argument, "the standard for triggering inquiry notice is whether 'a person of ordinary intelligence would consider it 'probable' that fraud had occurred." 699 F.3d 141, 151 n.3 (2d Cir. 2012). Vague suspicions, speculations and rumors by definition do not amount to such "probability," and the District Court thus further erred in ruling that the mere "possibility" of injury rather than its "probability" triggered the inquiry notice.[6] See also Morton's Mkt., v. Gustafson's Dairy, Inc., 198 F.3d 823, 832 (11th Cir.

[5] Cf. Jay E. Hayden Found. v. First Neighbor Bank, 610 F.3d 382, 385 (7th Cir. 2010), where "obstructive behavior occur[ed] after the plaintiff's inquiry has reached the point at which he discovered that he has a claim upon which to found a suit." Moreover, Ms. Youngblood-West was confronted not merely with "significant costs to litigation, limited financial resources, [and] an uncertain outcome," which the Supreme Court in Menominee Indian Tribe v. United States, 136 S. Ct. 750 (2016) considered "not extraordinary," but with deliberate deception, coverup and vicious intimidation by her powerful adversaries, which were "both extraordinary and beyond [her] control," meeting the equitable tolling test. Id. at 756.

[6] Cf. Doc. 88 at Pg. 18 ("She was *suspicious* of the *possible* collusion between Oates and Aflac attorney Cheves when she retained new counsel in 1993."); id. at Pg. 21 ("A reasonably diligent person would have reasonably *expected* at that time that other Aflac officials *may* have *some* knowledge of why he had left town.").

1999) ("[T]he issue of when a plaintiff is on 'notice' of his claim is a question of fact for the jury.").[7]

B. Tolling until 2016

The Supreme Court stated in Glus v. Brooklyn Eastern District Terminal, 359 U.S. 231 (1959), that "no man may take advantage of his own wrong. Deeply rooted in our jurisprudence this principle has been applied in many diverse classes of cases by both law and equity courts and has frequently been employed to bar inequitable reliance on statutes of limitations." And in Rotella v. Wood, 528 U.S.

[7] The cases cited by Cheves on Pgs. 14-15 of his Brief stand for an undisputable proposition that plaintiffs' knowledge of the injury triggers the limitation clock. None of those cases, however, involves a situation where, as here, Appellees actively concealed plaintiff's injuries. In A.L. v. Shorstein, Case No. 3:15-cv-1181-J-32PDB, at *6 (M.D. Fla. Feb. 9, 2017), plaintiff was aware of her injury – "the loss of the right to parent her children" – as soon as "she signed the adoption papers." In Corcel Corp. v. Ferguson Enters., Inc., 12-80896, 2016 WL 880557 (S.D. Fla. Mar. 8, 2016), plaintiff was aware of the central issues in this case when it clearly articulated its complaint and not merely "assert[ed] some speculation of injury or an amorphous rationale for its complaint," which is the most that Ms. Youngblood-West could have done prior to Dr. Amos' 2016 revelations. In Hunt v. Am. Bank Trust, 783 F.2d 1011, 1014 (11th Cir. 1986), plaintiff -- a receiver for an insurance company -- was deemed on notice of the injury because the state insurance department that had appointed him was aware of fraudulent transactions. In Mathews v. Kidder, Peabody Co., 260 F.3d 239, 252 (3d Cir. 2001), the Court noted in the context of securities fraud claim that "if storm warnings existed, and the Appellants chose not to investigate, we will deem them on inquiry notice of their claims." The securities fraud analogy is inapposite here and, moreover, Ms. Youngblood-West alleges that Appellees affirmatively thwarted her attempts to investigate her injuries.

549, 560-61 (2000), the Supreme Court did not "unsettle the understanding that federal statutes of limitations are generally subject to equitable principles of tolling, . . . and where a pattern remains obscure in the face of a plaintiff's diligence in seeking to identify it, equitable tolling may be one answer to the plaintiff's difficulty."

Ms. Youngblood-West's complaint sets out her diligent efforts to uncover the truth and the extraordinary circumstances of the active concealment of that truth by Dr. Amos' [redacted] that stood in her way, justifying equitable tolling. Doc. 26 ¶¶ 34-35. Indeed, it appears that Ms. Youngblood-West is the only one among the [redacted] who had the courage and perseverance to investigate and uncover their unlawful conduct.

In Villarreal v. R.J. Reynolds Tobacco Co., 839 F.3d 958, 972 (11th Cir. 2016), this Court stated where "active concealment" is alleged, "we apply the familiar equitable modification to statutes of limitation: the statute does not begin to run until the facts which would support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his right." The facts which would support Ms. Youngblood-West's causes of action were neither apparent nor should have been apparent to her prior to the September 2016 meeting with Dr. Amos precisely because each of the Appellees had wrongfully concealed

them. "A party responsible for such wrongful concealment is estopped from asserting the statute of limitations as a defense." Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924, 930 (5th Cir. 1975).

And in Gowen v. Cady, 189 Ga. App. 473, 475 (Ga. Ct. App. 1988), the court held that "[w]here there is, as here, a confidential relationship between physician and patient, and where the physician in performing an authorized operation goes beyond the contract and performs another operation, and where the patient does not know that the physician exceeded the contract, the concealment of the facts constitutes actual fraud and tolls the statute of limitations. The statute does not begin to run until the discovery of the fraud."

A fortiori, when [redacted] and intimidation, "the concealment of the facts . . . tolls the statute of limitations."

Appellees argue in response that Reeb and Gowan are not applicable because they are not RICO cases. However, as this Court stated in Cook v. Deltona Corp., 753 F.2d 1552, 1562-63 (11th Cir. 1985), "[p]rinciples of equitable tolling

are read into *every* federal statute of limitation" – they are not RICO-specific. See also Koch, 699 F.3d at 149, describing the injury discovery rule discussed in Rotella as "the common law rule."[8]

With respect to Dr. Amos, all statutes of limitation are also tolled due to his [redacted] status. Dr. Amos argues in response that for purposes of O.C.G.A. § 9-3-94, defendant's removal from the state tolls the statute of limitations until such time when plaintiff could serve him with process, and that Ms. Youngblood-West could have served him earlier because the Releases "confirm Youngblood-West knew full well how to contact and negotiate with Dr. Amos and his agents after 1987." Dr. Amos' Brief at 33. As a factual matter, however, the Complaint does not allege that Ms. Youngblood-West had any contacts with Dr. Amos in 1992-93, or knew where Dr. Amos was [redacted] until 2016.

Moreover, Dr. Amos is not merely a civil defendant absent from Georgia – he is [redacted], and "any person who takes himself out of the

[8] Appellees also argue that tolling is not available under Lehman v. Lucom, 727 F.3d 1326, 1331-32 (11th Cir. 2013). However, in Lehman, the Court stated that "Lehman was aware of all the alleged RICO injuries more than four years before the September 23, 2011 filing date of his complaint. Comparing the allegations of Lehman's January 2007 abuse of process complaint and his September 2011 civil RICO complaint, the court observed that the two documents were 'strikingly similar.'"). Here, Ms. Youngblood-West did not know key facts about Dr. Amos' [redacted], or their coverup in 1992-93, and her 1992-93 Releases and her 2018 RICO complaint are rather strikingly different.

[redacted]

IV. RICO Section 1962(c) claim is properly stated.

A. Pattern of racketeering activities

The Complaint alleges that each member of the Aflac RICO Enterprise participated in covering up Dr. Amos' [redacted] through a pattern of predicate acts. These factual allegations are outlined in the Complaint's Summary of Key RICO Allegations (Doc. 26 at ¶¶ 37-43), detailed in its Facts section (id. ¶¶ 102-215) and summarized in its RICO counts as to each Appellee, see id. ¶¶ 244-45 (Dr. Amos), ¶¶ 246-47 (Aflac), ¶¶ 248-49 (Dan Amos), ¶¶ 250-51 (Cheves) and ¶¶ 252-53 (Oates).

In particular, the Complaint alleges that Dr. Amos' [redacted]

[redacted]

[redacted] Doc. 26 ¶ 224.

From the premise that Dr. Amos had [redacted], it necessarily follows that Appellees' knowing and active concealment of those [redacted] was also criminal, accomplished by them through, *inter alia*, violations of section 1341 (mail fraud), section 1343 (wire fraud), section 1503 (obstruction of justice), section 1512 (tampering with a witness), and/or section 1513 (retaliating against a witness) – *i.e.*, predicate acts of racketeering activity within the meaning of Section 1961(1)(B). Doc. 26 ¶¶ 235-39. See McGrane v. Reader's Digest, 822 F. Supp. 1044, 1046 (S.D.N.Y. 1993) ("[W]here criminal wrongdoing and at times other misconduct are involved, arrangements to 'cover up' may violate 18 U.S.C. § 3 (accessory after the fact), § 4 (misprision of felony), § 371 (conspiracy to defraud the United States), §§ 1341-1346 (mail and other fraud), §§ 1501-1517 (obstruction of justice) or other specific statutes.").

Appellees argue that there is no RICO pattern because the alleges scheme supposedly had a narrow purpose of [redacted] and concerned only a single scheme, relying on Jackson v. BellSouth Telecomms., 372 F.3d 1250 (11th Cir. 2004) and Menasco, Inc. v. Wasserman, 886 F.2d 681 (4th Cir. 1989). Aflac's Brief at 36-37. In Jackson, "the alleged racketeering activity was related to the settlement of a *single* lawsuit, and, notably, was not designed to

perpetrate racketeering with respect to a *series* of cases." 372 F.3d at 1267 (emphasis original). And in Menasco, 886 F.2d 681, 684 (4th Cir. 1989), the Fourth Circuit stated that "[p]redicate acts which arise under a single scheme . . . may be a pattern for RICO purposes if they are continuous and related."

Here, the Complaint alleges that Ms. Youngblood-West is among [redacted]. The Complaint further alleges that each Appellee participated in the long-running scheme with the goals of [redacted]. Doc. 26 ¶ 38.

In pursuit of those goals, Appellees employed different schemes over an extended period of time, committing predicate acts that "are related, and . . . amount to or pose a threat of continued criminal activity." H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 239 (1989). As the Fourth Circuit stated in Menasco, 886 F.2d at 684, citing Northwestern, the pattern test "is commonsensical, not formulaic." This commonsensical test is amply met by the Complaint's factual allegations.

B. Association-in-fact

An association-in-fact enterprise alleged in the Complaint "may be formal or informal, and requires only three structural features: (1) a purpose, (2) relationships among those associated with the enterprise, and (3) longevity sufficient to permit these associates to pursue the enterprise's purpose." Al-Rayes v. Willingham, No. 18-11059 (11th Cir. Feb. 5, 2019).

The Complaint alleges that "Aflac and the individual Defendants Daniel Amos, Dr. Amos, Cheves and Oates associated with or employed by Aflac constitute an enterprise (the Aflac RICO Enterprise)," and that "[e]ach of the Defendants conducted or participated, directly or indirectly, in the conduct of the Aflac RICO Enterprise's affairs through a pattern of racketeering activity" (Doc. 26 ¶¶ 220-21), and sets out the factual basis for each Appellees' conduct of the Enterprise through a pattern of racketeering acts. Id. ¶¶ 224-53.

In response, Aflac and Dan Amos argue that "a corporation cannot conspire with its employees and agents," and that "a plaintiff may not plead the existence of a RICO enterprise between a corporate defendant and its agents or employees acting within the scope of their roles for the corporation because a corporation necessarily acts though its agents and employees," Aflac's Brief at pp. 29, 39, citing Ray, 836 F.3d 1340.

In Ray, however, this Court stated: "The Supreme Court has held that, where the defendant is a natural person, he is distinct for RICO purposes from a closely held corporation . . . ." Accordingly, "*RICO's distinctiveness requirement is met where an individual defendant engages in a pattern of racketeering activity through a corporation*." Id. at 1356. Here, the four individual Appellees are natural persons engaged in a pattern of racketeering activities through Aflac, satisfying the distinctiveness requirement.[9]

[9] The issue was "quite different" in Ray, 836 F.3d at 1356, where "the corporation [was] the defendant person, and the corporation, together with its officers, agents, and employees, [were] said to constitute the enterprise." Here, Aflac is not the only defendant as in Ray, and the presence of four individual Appellees satisfied the distinctiveness requirement. Moreover, the Court stated in Ray that "a defendant corporation cannot form a RICO enterprise with its own employees or agents *who are carrying on the normal work of the corporation*." Id. By contrast, in concealing the criminal acts by Aflac's Chief Medical Director, Appellees cannot be said to have been "carrying on the normal work" of the insurance company.

Nor could these acts be characterized as "simply performing services for an enterprise," as in Goren v. New Vision Int'l. Inc., 156 F.3d 721, 728 (7th Cir. 1998). Those were RICO predicate acts of the obstruction of justice, witness intimidation, mail and wire fraud that each Appellee was performing -- not the run-of-the-mill "services." Cf. Design Pallets, Inc. v. Gray Robinson, Case No. 6:07-cv-655-Orl-31KRS, at *10 (M.D. Fla. Aug. 5, 2008) (distinguishing between "run-of-the-mill provision of professional services" and those acts that "cross the line between traditional rendition of legal services and active participation in directing the enterprise"); Handeen v. Lemaire, 112 F.3d 1339, 1348-49 (8th Cir. 1997) ("The polestar is the activity in question, not the defendant's status.").

C. Economic injuries by reason of RICO violations

Ms. Youngblood-West alleges that she "has suffered and continues to suffer tangible injuries to her property by reason of Defendants' RICO violations" and summarizes several categories of her financial losses in paragraph 15 of her complaint, Doc. 26.

First, Ms. Youngblood-West's payments to Dr. Amos for the medically unnecessary procedures [redacted] are cognizable as RICO injuries. In Blevins v. Aksut, 849 F.3d 1016, 1021 (11th Cir. 2017), this Court has held that payments for medically unnecessary procedures constitute economic injuries for RICO purposes. The Court distinguished its ruling in Grogan v. Platt, 835 F.2d 844, 848 (11th Cir. 1988), that RICO injury "excludes personal injuries, including the pecuniary losses therefrom," stating: "Plaintiff seeks to recover damages under § 1964(c) for the amounts they paid for the unnecessary heart procedures. *These injuries do not flow from any personal injuries*. Rather, as in Ironworkers, the payments themselves are economic injuries because they were for medically unnecessary procedures."[10]

[10] In Ironworkers Local Union 68 v. AstraZeneca Pharm., LP, 634 F.3d 1352, 1363 (11th Cir. 2011), the plaintiffs asserted civil RICO claims against AstraZeneca claiming that it fraudulently induced physicians to prescribe its drugs instead of cheaper alternatives. The Court noted that a plaintiff who "allege[s] that her purchase payments were the product of a physician's medically unnecessary or inappropriate prescriptions" has likely pleaded a RICO injury.

Nothing more is needed to satisfy the RICO injury requirement. See, e.g., Northeast Women's Center, Inc. v. McMonagle, 868 F.2d 1342, 1347-49 (3d Cir. 1989) (incidental damage of $887 sufficient to constitute a RICO injury; "RICO requires no more.").

Second, Ms. Youngblood-West alleges that Appellees' fraud and duress caused her to accept the inadequate settlement to which she would not have otherwise agreed, resulting in direct financial losses. In Deck v. Engineered Laminates, 349 F.3d 1253, 1259 (10th Cir. 2003), cited in Raney v. Allstate Ins. Co., 370 F.3d 1086, 1088 (11th Cir. 2004), the Tenth Circuit held that "[t]he mail fraud allegedly caused Plaintiff *to enter into a settlement to which he would not otherwise have agreed*. As a result of that settlement, he relinquished claims he had against EL and agreed not to compete with EL in certain ways. In our view, both these alleged consequences of the settlement were injuries to Plaintiff's business or property."

Likewise, the Ninth Circuit in Living Designs, Inc. v. EI Dupont de Nemours & Co., 431 F. 3d 353, 364 (9th Cir. 2005), held that "[t]he financial loss Plaintiffs claim is that *they settled their claims for a smaller percentage of their alleged damages than they could have received absent DuPont's fraudulent inducement*. Therefore, the district court erred in determining that Plaintiffs' 'allegations . . . fail to allege a cognizable RICO injury.'"

Financial loss from the fraudulent settlement is different from the "hypothetical inability to recover" at issue in Lincoln House, Inc. v. Dupre, 903 F.2d 845 (1st Cir. 1990), and from contingent "claims that plaintiffs might have pursued" in DeSilva v. North Shore-Long Island Jewish Health Sys., Inc., 770 F. Supp. 2d 497 (E.D.N.Y. 2011) (Aflac's Brief at p. 32).[11]

Third, Ms. Youngblood-West also alleges that Plaintiff was injured in her rights to honest services by her OB/GYN doctor Defendant Dr. Amos and by her lawyer Defendant Oates. Doc. 26 at ¶15. This Court in U.S. v. DeVegter, 198 F.3d 1324, 1330 (11th Cir. 1999), recognized that "a *private* sector violation of § 1346 honest services fraud involves a breach of a fiduciary duty and reasonably foreseeable economic harm." See also Skilling v. U.S., 561 U.S. 358, 408 (2010) (referring to bribery in public and private sectors). And in Feaz v. Wells Fargo, 745 F.3d 1098, 1111 (11th Cir. 2014), this Court stated that "the defining characteristic of a kickback is divided loyalties."

[11] Appellees' authorities are also inapposite. In Lincoln, the Court did not reach the merits of the RICO claim, because it was contingent upon the outcome of the pending state action and "not now ripe for judicial resolution." 903 F.2d at 847. In DeSilva, the District Court held that "Plaintiffs' claimed injury for interference with their right to recover for unpaid wages is not ripe for review." 770 F. Supp. at 521-22. And Chaset v. Fleer/Skybox International, LP, 300 F.3d 1083, 1087 (9th Cir. 2002) (Aflac's Brief at p. 32), has nothing to do with inadequate settlements or "losing a hypothetical cause of action": "Purchasers of trading cards do not suffer an injury cognizable under RICO when they do not receive an insert card."

Ms. Youngblood-West's claim against Oates satisfies these requirements by alleging his collusion with the other Appellees in furtherance of their interests and to his client's severe detriment, in exchange for the collusive [redacted] fee payment -- a kickback from Appellees -- causing her foreseeable economic harm in the form of the inadequate settlement.

Fourth, Ms. Youngblood-West claims "additional expenses, legal costs and inconveniences caused by the delay in enforcing her rights and bringing her causes of action now instead of earlier by reason of Defendants' fraud and active concealment of the crimes." Doc. 26 at ¶ 15. In Malley-Duff & Assocs. v. Crown Life Ins., 792 F.2d 341, 354-55 (3d Cir. 1986), the Third Circuit held that "allegations of 'great expenses, delays and inconvenience . . . in [plaintiff's] prosecution of the First Lawsuit' were a sufficient pleading of injury to business or property to give [plaintiff] RICO standing."

V. RICO Section 1962(d) and state law claims are properly stated.

The District Court dismissed Ms. Youngblood-West's RICO §1962(d) conspiracy claim and her state law claims for the same reasons as it dismissed the §1962(c) substantive claim – as implausibly stated, time-barred, and released. See Doc. 88 at 42-45.

Appellees now argue that Ms. Youngblood-West has abandoned her state law claims because she purportedly "did not mention those claims in her opening brief." Aflac's Brief Pg. 14. This argument is legally and factually incorrect.

As Appellees' own authority recognizes, "[o]ur task in assessing an appeal is to adjudicate the *issues* that are fairly and plainly presented to us and of which the appellee is put on notice." U.S. v. Jernigan, 341 F.3d 1273, 1284 n.8 (11th Cir. 2003); see also Federal Sav. Loan Ins. Corp. v. Haralson, 813 F.2d 370, 373 n. 3 (11th Cir. 1987) ("The waiver rule requires that the appellant state and address *argument to the issues* the appellant desires to have reviewed by this Court in the appellant's initial brief.").

Ms. Youngblood-West identified and preserved the relevant issues that the District Court ruled as equally applicable to her RICO and state law claims, and argued in her Initial Brief that "[t]he District Court erred in dismissing Ms. Youngblood-West's RICO and state law claims as implausible and time-barred" (Pg. 19); that her complaint states "the *prima facie* elements of her RICO and state law claims with the requisite plausibility" (Pg. 20); and that "[b]ecause the Releases are unenforceable, the following orders premised on their enforceability are in error and should be reversed for this reason, among others . . . the orders granting motions by Dr. Amos, Ms. Cheves and Mr. Oates to dismiss Ms. Youngblood-West's RICO Action on the basis of the Releases" (Pg. 46).

Therefore, contrary to Appellees' contentions, Ms. Youngblood-West did not waive these issues but plainly presented them and advanced her arguments equally applicable to her RICO and state law claims.

VI. The Releases are invalid.

A. Contractual invalidity

Appellees claim that "Youngblood-West alleges that, to be enforceable, the Settlement Agreements required the signature of Dr. Amos as a 'counterparty.'" (Dr. Amos' Brief at 15). This contention ignores Appellant's *primary* argument -- that to constitute an "agreement" in the first place, the contract must have at least two parties, which the Releases plainly do not because neither Dr. Amos nor anyone else appears within the four (or eight) corners of the Releases as the Youngbloods' counterparty making any agreement with the Youngbloods or undertaking any contractual duties under the Releases (completely aside from the signature issue). Neither Release therefore constitutes an agreement "between two or more parties" -- which is the first contract formation requirement under Georgia law. See O.C.G.A. § 13-1-1; Coleman v. H2S Holdings, LLC, 230 F. Supp. 3d 1313, 1319 (N.D. Ga. 2017) ("The Georgia Code defines [contract] as 'an agreement between *two or more parties* for the doing or not doing of some specified thing.'"). Appellees ignore this key argument but merely ignoring the

argument does not make it go away, and the invalidity of the Releases as manifestly lacking "two or more parties" thus remains unrefuted.

As her *secondary* point, Ms. Youngblood-West argued that even if Dr. Amos were hypothetically assumed to be a direct contracting party contrary to the plain language of the Releases, they would not be effective by their own terms stating that they "shall become effective upon execution by all parties," because neither one is executed by Dr. Amos.[12]

The District Court has held, however, that Dr. Amos "alleges that he fully performed his obligations under the settlement agreements by tendering the required payments. Compl. ¶ 31," and that the Releases "became enforceable by [Dr. Amos] when he paid [Ms. Youngblood-West] the stated consideration as alleged in the Complaint." BA Dkt. 19 Pgs. 8, 10.

The problem with this position is that Dr. Amos *nowhere* in fact alleges in his verified complaint (or submits any evidence on his motion for summary judgment) that he had paid that consideration; nor do the Releases themselves

[12] "A contract that is intended to be signed by both parties, and so appears on its face, is complete when thus signed." Burson v. Milton Hall Surgical Assoc., 806 S.E.2d 239, 246 (Ga. Ct. App. 2017). Conversely, "[w]ithout the valid signature [required by the contract], the contract here was incomplete and unenforceable as a matter of law." MacDonald v. Whipple, 615 S.E.2d 150, 151 (Ga. Ct. App. 2005); Cobra Tactical, Inc. v. Payment Alliance Int'l Inc., 315 F. Supp. 3d 1342, 1347 (N.D. Ga. 2018) (signatures are required "when the contract itself explicitly requires them to become effective").

impose on Dr. Amos any duty to pay the consideration or any other contractual duty that he could have performed to become bound.

B. Antecedent fraud and duress

In addition to their fatal contractual defects, Ms. Youngblood-West alleges that the Releases are vitiated by the antecedent fraud and duress. Appellees contend in response that Ms. Youngblood-West's not restoring the consideration back to Dr. Amos bars her from arguing fraud in the inducement, citing Kobatake v. EI Dupont de Nemours & Co., 162 F.3d 619 (11th Cir. 1998), and the District Court agreed. However, this Court stated in Kobatake, 162 F.3d at 626):

> [A] party "need not tender back what he is entitled to keep, and need not offer to restore where the defrauding party has made restoration impossible, or when to do so would be unreasonable.' Crews v. Cisco Brothers Ford-Mercury, Inc., 201 Ga. App. 589, 411 S.E.2d 518, 519 (Ga. App. 1991). Because "[t]he tender rule is that neither party may retain an unfair advantage," courts are directed to take a "flexible and pragmatic approach . . . toward the tender requirement." Remediation Services, Inc. v. Georgia-Pacific Corp., 209 Ga. App. 427, 433 S.E.2d 631, 636 (Ga. App. 1993).

Appellees do not refute any of the several independent grounds why the tender rule does not bar Ms. Youngblood-West's antecedent fraud defense advanced on pages 40-41 her Initial Brief.

C. The Releases are contrary to public policy.

The Releases are also unenforceable because their enforcement "is outweighed in the circumstances by a public policy harmed by enforcement of the

agreement." Town of Newton v. Rumery, 107 S. Ct. 1187, 1192 (1987). Ms. Youngblood-West cites two distinct public interests harmed by the Releases: (1) the public's interest of encouraging the disclosure of criminal conduct and prosecution of offenders generally, and (2) the public's interest in knowing about [redacted].

In response to her first point, Appellees contend that the Releases are "subject to appropriate and limited *implied* exceptions" allowing Ms. Youngblood-West to report crimes to law enforcement authorities. However, under Georgia law a court may not imply terms in the contract unless "the implied term is *not inconsistent* with some express term of the contract and . . . an inference . . . is *absolutely necessary* to introduce the term to effectuate the intention of the parties.'" Higginbottom v. Thiele Kaolin Co., 251 Ga. 148, 149 (Ga. 1983); Barger v. Garden Way, 231 Ga. App. 723, 726 (Ga. Ct. App. 1998) ("An implicit contractual provision exists where such provision *is necessary* to effect the full purpose of the contract and is so *clearly within the contemplation of the parties* that they apparently deemed it unnecessary to state it.").[13] Here, the express terms of the Releases prevent Ms. Youngblood-West from sharing information with

[13] See, e.g., Camp v. Eichelkraut, 246 Ga. App. 275, 285 (Ga. Ct. App. 2000), where "permission to cooperate with an official investigation or inquiry [was] expressly contemplated in the provision on the confidentiality of financial documents," leading the court to rule that it was also "an implied term of both the non-disparagement provision and the confidentiality provision."

"anyone" and with "any agency," reflecting Appellees' intent to keep confidentiality airtight, with no implied exceptions.

In response to her second point, which Ms. Youngblood-West supports by [redacted].

VII. The injunction enforcing the Releases violates the First Amendment.

A permanent injunction issued by a federal court forever gagging a plaintiff and counsel on the basis of a [redacted] surely presents First Amendment concerns. The injunction is a prior restraint of speech of Ms. Youngblood-West and her counsel, "the most serious and the least tolerable infringement on First Amendment rights," Nebraska Press Assn. v. Stuart, 427 U.S. 539, 559 (1976), and a violation of the public's right to hear information of significant public interest. It is "'well established that the Constitution protects the right to receive information and ideas'

from a willing speaker." Stephens v. Cty. Of Albemarle, 524 F.3d 485, 491 (4th Cir. 2008) (quoting Stanley v. Georgia, 394 U.S. 557, 564 (1969)).

The injunction cannot stand as plainly unconstitutional under the authorities cited in Ms. Youngblood-West's Initial Brief Pgs. 47-49. In addition to those authorities, the Fourth Circuit ruled two months ago in Overbey v. Baltimore, No. 17-2444, Dkt. 39-1 (4th Cir. July 11, 2019), that the city of Baltimore could not buy the silence of victims of police brutality with settlements that include a non-disparagement clause: "We hold that the non-disparagement clause in Overbey's settlement agreement amounts to a waiver of her First Amendment rights and that strong public interests rooted in the First Amendment make it unenforceable and void."

The Court in Overbey stated that a waiver is enforceable only when it is made knowingly and voluntarily, and its enforcement is not outweighed by a relevant public policy that would be harmed by enforcement.[14] The Court restricted its analysis to the second prong as "decisive as a matter of law," and ruled that the settlement agreement was "contrary to the public's well-established First Amendment interest in 'uninhibited, robust, and wide-open' debate on 'public

[14] See also Erie Telecomms., Inc. v. Erie, 853 F. 2d 1084, 1094 (3d Cir. 1988), relied upon by Dr. Amos, where the Third Circuit stated that "it is well settled that such waivers must be voluntary, knowing, and intelligent, and must be established by 'clear' and 'compelling' evidence," all absent here.

issues,'" citing N.Y. Times Co. v. Sullivan, 376 U.S. 254 (1964). And in response to the city's argument that Overbey "sold her [speech] rights," the Court stated: "When the second half of Overbey's settlement sum is viewed in this light, it's difficult to see what distinguishes it from hush money. Needless to say, this does not work in the city's favor." Id. at 16.

Here, Appellees' desire to avoid unwanted publicity and scrutiny of their criminal acts cannot outweigh the public's First Amendment right to hear information of significant public interest concerning a major insurance corporation purporting to be "the most ethical company globally" covering up [redacted][redacted][redacted].[15]

[15] This Court in United Egg Producers v. Standard Brands, 44 F. 3d 940, 943 (11th Cir. 1995) recognized that "court enforcement of an agreement between private parties can, in some circumstances, be considered governmental action for constitutional analysis." And the United Egg holding -- "Where two disputing parties in positions of equal bargaining power agree, through a Settlement Stipulation, to restrict, in a limited degree, their First Amendment rights on commercial speech as was done here, we hold that court enforcement of that agreement is not governmental action for First Amendment purposes" -- is distinguishable from the permanent injunction enforcing the Releases here, where (i) the parties were not even arguably in the equal bargaining position; (ii) their settlement never took the form of a valid contract and was in any event vitiated by the antecedent fraud and duress and outweighed by the public interests in non-enforcement; and (iii) its purported confidentiality provision not merely restricted "in a limited degree" Ms. Youngblood-West's commercial speech but altogether denied her the right to tell the most important and defining story of her life with significant public implications.

VIII. Ms. Youngblood-West was denied any opportunity to conduct discovery needed to oppose Dr. Amos' summary judgment motion.

The source of the [redacted] in 1992 (less [redacted] for Oates), which translated into [redacted] for Ms. Youngblood-West, remains unknown. Dr. Amos neither alleges in his verified complaint that it was he who had paid that consideration nor provides any evidence of his paying it on his summary judgment motion.

Yet, this is a highly material fact because the District Court's own rationale for upholding the Release (with which Appellant disagrees) rests squarely on Dr. Amos' paying that consideration -- an unpled and unwarranted assumption. Separately, it is also highly important because if the only plausible alternative sources – Aflac and/or Dan Amos – are shown to have paid it instead, this showing will demonstrate beyond peradventure their deep involvement in the coverup and the falsity of their current denials.

Ms. Youngblood-West was denied any discovery on this and other issues at the very heart of the case and central to her defenses against the Releases on the grounds of invalidity, ineffectiveness, antecedent fraud, and others. "*The law in this circuit is clear*: the party opposing a motion for summary judgment should be permitted an adequate opportunity to complete discovery prior to consideration of the motion." Jones v. City of Columbus, Ga., 120 F. 3d 248, 253 (11th Cir. 1997).

IX. Circumstances requiring recusal

The recusal circumstances here differ qualitatively and quantitatively from those deemed insufficient by this Court in Conroy v. Amos, No. 18-13834 (11th Cir. Sept. 5, 2019), submitted by Appellees as their supplemental authority.

First, the District Judge's spouse is among the Page, Scrantom releasees under the 1993 Release and therefore an intended beneficiary of its confidentiality provision; her interest in maintaining that confidentiality "could be substantially affected by the outcome" of the case within the meaning of Section 455(b)(5)(iii).

Second, the District Judge's spouse's 1992-93 association with the Page, Scrantom lawyers actively involved in the concealment of [redacted] in threatening to incarcerate Ms. Youngblood-West provides another reason why the Judge's spouse has an interest in ensuring complete confidentiality of this matter. (Doc. 69-5 Pgs. 1-2).[16]

Third, the District Judge's focus on the "insubstantial" or "nonexistent" interest of his spouse as grounds for dismissing the recusal motion is in error because the statute itself does not speak in terms of a substantial *vel non* "interest" but rather refers to "an interest that could be *substantially affected* by the outcome of the proceedings." Section 455(b)(5)(iii). The Judge's spouse's third-party

[16] A significant reputational damage to the law firm for its role in actively covering [redacted] could not be reasonably disputed.

beneficiary interest in the 1993 Release is a legally cognizable interest that could be "substantially affected" by the Release's invalidation. Her interest in maintaining confidentiality and avoiding reputational damage from the public disclosure of Page, Scrantom's involvement [redacted] is another "interest" that could be so "substantially affected" within the meaning of Section 455(b)(5)(iii).

Fourth, the District Judge's focus on his spouse's financial interest only also has no support in the statute, which contemplates any material interest, not limited to financial, that "could be substantially affected by the outcome" as a disqualifying factor. Accordingly, Ms. Youngblood-West's affidavit on recusal nowhere refers to the Judge's spouse's "financial" interest, arguing instead that her interest would be substantially affected if the Releases were invalidated because she was a member of the Page Scrantom law firm at the time when the firm played a key role [redacted], and in the Bank's vicious persecution of Ms. Youngblood-West. See Doc. 69-5; Doc. 127-2 Ex. 5 ¶ 5 (Bank's draft workout agreement with Ms. Youngblood-West expressly mentioning the District Judge's spouse).

Accordingly, the District Judge's spouse has an "interest that could be significantly affected by the outcome of the proceeding," requiring recusal under Section 455(b)(5)(iii).

Moreover, Dan Amos, Cheves and Oates, and the District Judge, are all members of the coveted Fish House Gang that independent disinterested observers uniformly describe as an exclusive "behind the scene" power structure and not merely a dining establishment. Doc. 69-5 Pg. 11. Dan Amos and Dr. Amos are also relatives of the District Judge whose degrees of relationship remain undisclosed. Aflac's in-house counsel Donald Land is John Amos' grandson and a distant relative of the District Judge. Doc. 69-5 ¶¶ 11-16.

These ties between the District Judge and *each* of the five Appellees are quantitatively different from those found by this Court to be insufficient in Conroy v. Amos, No. 18-13834. Together with the Judge's spouse's interest in the outcome not present in Conroy, they raise sufficient doubts about the Judge's impartiality under Section 455(a) "requiring recusal in those situations that *cannot be categorized neatly*, but nevertheless raise concerns about a judge's impartiality." U.S. v. Patti, 337 F.3d 1317, 1321-22 (11th Cir. 2003). "Recusal under section 455(a) should follow if the reasonable man, were he to know *all the circumstances*, would harbor doubts about the judge's impartiality." In re

BellSouth Corp., 334 F.3d 941, 968-69 (11th Cir. 2003). "Any doubts must be resolved in favor of recusal." Patti, 337 F.3d at 1321.

CONCLUSION

Ms. Youngblood-West alleges specific facts of Dr. Amos' numerous [redacted], Appellees' long-running [redacted], and their vicious pursuit of [redacted] Ms. Youngblood-West in furtherance of that concealment from 1992-93 to the present. For purposes of this appeal, these facts, accepted as true, fully support each of her RICO and common law causes of action as plausible, timely, and sufficiently pled.

Outside of this sealed appeal, the fact that nobody has been held accountable for [redacted], either in the court of law or in the court of public opinion, and the fact that the public is not allowed to hear and learn about [redacted] herself is being gagged and threatened by Appellees, and her counsel remains subject to their Rule 11 motion for merely bringing her case and attempting to seek justice in a federal court, is an outrage. The numerous [redacted], and their families whose lives had been deeply affected by [redacted], deserve answers and justice -- not the continuing persecution by [redacted].

September 19, 2019

Respectfully Submitted,

Dimitry Joffe
JOFFE LAW P.C.
765 Amsterdam Avenue, 2C
New York, NY 10025
Tel: (917) 929-1964
Email: dimitry@joffe.law
Counsel to Appellant

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE AND TYPE-STYLE REQUIREMENTS

This document complies with the Court's order entered on September 19, 2019, granting Appellant's motion for leave to file an oversized reply brief of no more than 10,000 words because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 9,993 words.

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Times New Roman 14.

/s/ Dimitry Joffe
Dimitry Joffe
JOFFE LAW P.C.
Counsel for Appellant

CERTIFICATE OF SERVICE

I, Dimitry Joffe, hereby certify that on this 19th day of September 2019, I caused a redacted copy of this response to the jurisdictional question to be sent electronically to the registered participants in this case through the ECF system and an unredacted (sealed) copy by email.

/s/ Dimitry Joffe
Dimitry Joffe
JOFFE LAW P.C.
Counsel for Appellant