

The Progress of this case will be followed from a

CASE DIARY

in chronological order with links to appropriate documents.

Also see the [Amended Complaint](#)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA

WILLIAM C. HAMMEL,
ALAN J. BELLAMENTE,
et al.,

Plaintiffs

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE CO.,
STATE FARM INDEMNITY COMPANY,
et al.

Defendants

COMPLAINT IN

CIVIL ACTION

No. 2:99-cv-44-T

SHORT CAPTION: HAMMEL v STATE FARM

PLAINTIFFS:

WILLIAM C. HAMMEL,

PRO SE

ALAN J. BELLAMENTE,

PRO SE

DEFENDANTS:

STATE FARM MUTUAL INSURANCE CO.,
its agents, servants and/or employees;

STATE FARM INDEMNITY CO., BLOOMINGTON, ILLINOIS
its agents, servants and/or employees,

and any other as yet undiscovered parties or entities,
related to this action, that may come to light in
subsequent discovery.

OTHER PARTIES THAT ARE NEITHER PLAINTIFFS NOR DEFENDANTS:

Plaintiffs complain also on behalf of other directly or
proximately injured parties, which injury or damage arises
from Defendants' tortious actions which made necessary certain
existing contractual agreements, to insure Plaintiffs' survival.
These parties are:

The Federal Government of the U. S. ;
The Social Security Administration of The U. S. ;
The Government of the State of North Carolina ;
The Government of the County of Graham, North Carolina ;
Donald A. Walton, of Rutherford, New Jersey ;
Mountain Area Information Network, of North Carolina ;
Plaintiffs' various healthcare givers who may have not been paid,

through the systematic pattern of racketeering activity alleged herein;
 Others whose proper payment were unnecessarily delayed with exactly the same purpose and motive, of which Plaintiffs complain herein;
 as well as other unknown injured parties that may yet be discovered.

These parties are included in accordance with the provisions of FRCP Rule 71.

THE COMPLAINT, IT'S ARGUMENTS AND CONTENTS:

<u>I.</u> JURISDICTION	paragraphs	1	-	10
<u>II.</u> VENUE	paragraphs	11	-	13
<u>III.</u> STANDING AND PLAINTIFFS' RIGHT TO RELIEF	paragraphs	14	-	17
<u>IV.</u> BACKGROUND AND FACTS OF THE CASE	paragraphs	18	-	86
<u>V.</u> LEGAL POSITION AND SUMMARY OF SPECIFICS	paragraphs	87	-	92
<u>VI.</u> CAUSES OF ACTION	paragraphs	93	-	101
<u>VII.</u> REGARDING THE RACKETEERING "ENTERPRISE"	paragraph	102	-	102
<u>VIII.</u> RELIEF SOUGHT	paragraphs	103	-	110
<u>IX.</u> DEMAND FOR JUDGMENT	paragraph	111	-	111
<u>X.</u> PLAINTIFFS' AVERMENT	paragraphs	112	-	114
<u>A. Exhibit</u>				
<u>B. Exhibit</u>				

I. JURISDICTION:

Plaintiffs aver on information and belief, and upon reasonable investigation and research that Federal RICO laws 18 USC 1961-1968 do not frustrate the goals of any laws regulating insurance in either the States of North Carolina or of New Jersey, and further that The Western District Federal Court of The State of North Carolina has jurisdiction in this matter:

- 1) Federal District court has jurisdiction by statute under
 1. 18 USC 1964(a)
 2. 28 USC 1331
 3. 28 USC 1339
- 2) There is Diversity of Citizenship, 28 USC Sec. 1332 regarding the tortious actions alleged and violations of 18 USC 1962 (RICO), and 18 USC 1951 (Hobbs) by Defendants, since continuity of these actions spans a time when Plaintiffs lived in the State Of New Jersey until February 1996, and thereafter in the State of North Carolina.
- 4) There is a further complete diversity of citizenship since the Defendants' States of incorporation are the State of Illinois and possibly New Jersey, while Plaintiffs are residents of the State of North Carolina.

Plaintiffs' allegations are directly against State Farm Indemnity, a wholly owned subsidiary of State Farm Mutual, and therefore also against State Farm Mutual which does business in many States of the United States; the home offices of State Farm Mutual are in the State of Illinois, of which it is a citizen, while State Farm Indemnity, upon information, belief and reasonable investigation is licensed only by the State of New Jersey, and the State of Illinois to do business only within those States, and that it does business only or primarily within the State of New Jersey.

- 5) The Parent company, State Farm Mutual does business in the State of North Carolina and has representatives in The Western District of North Carolina. On information and belief, State Farm Mutual is a Foreign Corporation doing business in the State Of North Carolina.
- 6) Based on the preceding, the allegations contained herein constitute a matter which affects Interstate Commerce, and presents a condition of "complete diversity of citizenship"; the matter, therefore, falls within Federal Jurisdiction, and specifically again under 18 USC 1951(b)(3) of the Hobbs Act.
- 7) Although there does exist a RICO provision in the North Carolina General Statutes, GS 75D 1-14, which appears to be an elaboration of 18 USC 1962, and explicitly prohibits the prohibited acts of 18 USC 1962, Plaintiffs cannot find such a cognate provision in the State of New Jersey. From these circumstances and further supporting documentation, it is the conclusion of Plaintiffs that their appropriate pleadings would be unwelcome in the State Courts of both New Jersey and of North Carolina.

All the preceding leaves the pursuit of justice possible only within the jurisdiction of the Federal Western District Court of North Carolina.

- 8) There is relevant Federal law regarding patterns of racketeering activity, RICO, and specifically also with regard to both mail and wire fraud, 18 U.S.C 1341 and 18 U.S.C 1343 respectively, as well as extortion, (Hobbs). Therefore, The ERIE doctrine is irrelevant, and the matters herein should be considered only within the bounds of Federal Law.
- 9) The federal law of the preceding paragraph is not in any "direct conflict" with any laws of the States of New Jersey or North Carolina, and specifically it does not "invalidate, impair, or supersede" any laws of these States which regulate insurance. U.S. Sup. Ct. Humana v. Forsyth, Certiorari, for 9th Cir. No. 97-303.
- 10) The amount of controversy well exceeds the statutory sum of \$75,000.

II. VENUE:

The Western District Federal Court of North Carolina is the only appropriate venue in this matter:

- 11) Plaintiffs reside, and have resided in Graham County, North Carolina for longer than three (3) years; Graham County lies within the Federal Western District of North Carolina.
- 12) The Parent company, State Farm Mutual does business in the State of North Carolina and has representatives in The Western District of North Carolina.
- 13) Any change of venue to a different district, for whatever reason, would cause such economic hardship, physical distress and possible physical injury to plaintiffs so that this case could not be litigated, and would negate, utterly, the pursuit of justice.

III. STANDING AND PLAINTIFFS' RIGHT TO RELIEF:

The Plaintiffs have standing in this matter, and in the The Western District Federal Court of North Carolina:

- 14) Plaintiffs reside, and have resided in Graham County, North Carolina for longer than three (3) years; Graham County lies within the Federal Western District of North Carolina.
- 15) Plaintiffs had a written and signed auto insurance policy
X14107-A12-30
with State Farm Indemnity of New Jersey, a wholly owned subsidiary of State Farm Mutual Insurance Company, against which Plaintiffs now claim multiple causes of Federal action.

A properly filed claim with some of its documentation for an MVA [September 16, 1994] in the State of Jersey was transferred, at some indeterminate time from State Farm Indemnity to State Farm Mutual in the State of North Carolina, without Plaintiffs' request, knowledge or consent. Plaintiffs' change of State residence was not a manoeuvre for the purpose of creating a diversity, but was, in fact, an action that was forced upon plaintiffs by the continued malicious, prohibited acts of Defendants, and an action prudently dictated by the threat of financial disembowelment, foreclosure, loss of all income, and physical damages, all of which actually came to pass, despite Plaintiffs efforts to avoid same.

- 16) This is a matter which devolves upon the interference by Defendants, in legitimate interstate commerce through its genuine pattern of racketeering activities.
- 17) Plaintiffs have been "stonewalled" by Defendants actions in denying covered benefits, and delays, continuously since July 27, 1995, for no ascertainable reasons. In matters of performance on PIP and UIM there are actions before the State Courts of New Jersey in Bergen County, with docket numbers: BER L 8964-96, and BER L 8465-96 where Defendants have continued to stonewall, without legitimate reason, in every aspect of discovery:
 1. failing in complete disclosure of pertinent documents in their possession as demanded, by providing only approximately 10% of what was available;
 2. repeatedly avoiding depositions, even under Court Order;
 3. avoiding additional depositions, even to this time.

Under Defendants' continuing deceit, abuse of process and such malicious persecution, Plaintiffs wither and have been left no choice but to seek justice within Federal Jurisdiction, on grounds of Defendants' racketeering activities.

IV. BACKGROUND AND FACTS OF THE CASE

- 18) Plaintiffs together held the auto insurance policy X14107-A12-30, with State Farm Indemnity of New Jersey.
- 19) Plaintiffs owned, jointly, but not as tenants in common, a 1992 Mercury Grand Marquis automobile, bearing VIN 2MECM75WXNX660755, with valid New Jersey registration plates "WH AB".
- 20) On September 16, 1994, at or about 10:00 PM EDST Plaintiffs sustained physical injury as a result of a rear-ending MVA, without fault of Plaintiffs. The policy in 18) was paid up and in force at that time.
- 21) Plaintiff Bellamente was driving at the time of the MVA of 20) and both Plaintiffs were wearing seatbelts as prescribed by the State Laws of New Jersey.
- 22) Plaintiff Bellamente had almost completely recovered, through conservative treatment, from an MVA which occurred on August 6, 1992, in which he was not at fault.
- 23) The tortfeasor's insurance company in MVA of 20) quickly paid the limit of his policy after Plaintiffs' surgeries, against which Defendants have already subrogated.
- 24) As a result of the prior MVA of 21), Plaintiff Bellamente's incapacity to work forced Plaintiff to close two video rental stores, a loss that has never been properly compensated.
- 25) As a result of this incapacity to work, Plaintiff Bellamente sold to Plaintiff Hammel, the remaining video retail store. Because of the MVA referred to in 20) of this section, two video retail stores had to be closed, although no compensation of any kind was ever sought, or had.
- 26) Plaintiff Hammel had never sustained injury from any MVA, and has never claimed injury for such, until the MVA of September 16, 1994.

- 27) As a result of the MVA referenced in 21) of this section, and Plaintiff Bellamente's incapacity to to work during the period of recuperation, it was necessary for Plaintiff Hammel to purchase and operate the business, with help from Bellamente as he could give it. The business was run as a d.b.a.
- 28) From about 1981, Plaintiff Hammel was a computer consultant, systems analyst and programmer for law firms specializing in tort law, and continued in this capacity until September 1995, when worsening physical condition prevented it.
- 29) The MVA caused immediate problems for Plaintiff Bellamente who was immediately taken to Holy Cross Hospital by ambulance. Plaintiffs believe that at that time no spinal cord injury was diagnosed, and that cervical spasm was noted. The diagnosis was cervical sprain. He declined medications, and was released.
- 30) Plaintiff Hammel followed and retrieved Plaintiff Bellamente from the hospital that night of September 16, 1994, since the automobile was still in drivable condition.
- 31) After retrieving Plaintiff Bellamente from the hospital, Plaintiff Hammel began experiencing spasm of both lower back and neck.
- 32) On the morning of September 17, 1994 Plaintiff Hammel was barely able to get out of bed.
- 33) Both Plaintiffs saw Peter Boulukos, D.C., the following morning. Dr. Boulukos took X-rays and began treatment for what was considered, at that time, minor injuries.
- 34) All papers and reports for claim with Defendants were filed in a timely way. The claim number is 30-3204-312.
- 35) Prior to the 09/16/94 MVA of 20), both Plaintiffs were in excellent physical health and in good physical condition.
- 36) Prior to the 09/16/94 MVA of 20), both Plaintiffs were in prospering businesses.
- 37) On information and belief, Defendants have not fully paid for conservative treatment for injuries sustained, from September 17, 1994 through about July 26, 1995.
- 38) From the summary denial of all medical benefits on or about July 26, 1995, no request was made by defendants for an IME until the request for an IME in a letter from Defendants dated September 21, 1995.
- 39) On November 6, 1995, Plaintiff Hammel went to his Internist, Paul S. Sender, M.D. as a result of a sudden onset of heart palpitations while in a state of severe anxiety. An immediate EKG revealed a newly present Left Bundle Branch Block (LBBB).
 1. Plaintiff had had no illnesses of any kind immediately prior to this, or at this time.
 2. The first prescription of Klonopin was given at that time for "severe anxiety". Elevated BP and pulse rate were noted.
 3. Dr. Donald Carringer, Robbinsville NC ordered a Cardiac halter for possible bradycardia, which tests positive. He referred Plaintiff Hammel to Dr. A. Earl Haddock at Harris Regional Hospital.
 4. Dr. Haddock, chief cardiologist at Harris Regional Hospital, Sylva NC performed a thallium stress test which revealed decreased left cardiac throughput. October 30, 1997.
 5. Heart Catheterization was performed by Dr. Hanich at Mission Memorial Hospital in Asheville on November 7, 1997 which revealed no infarction and only insignificant arterial narrowing.

- 40) The various acts forming a pattern of racketeering extending from about July 26 1995, to December 4, 1995 are described in the two complaints that were submitted to the New Jersey Department of Insurance Consumer Complaints, (NJDICC) submitted as Attachments A and B. The specific acts were:
1. The repeated switching of claims adjusters.
 2. The repeated losses of documents
 3. The repeated inabilities to find "the file".
 4. The repeated failures of callbacks
 5. The complete ignoration of medical reports of serious nature.
 6. The repeated delays in every aspect of claims handling.
 7. Mendacity regarding medical statements.
 8. The complete ignoration of Plaintiffs' communications regarding this mendacity.
 9. The assignment of physicians who were known to render reports that were in the company's favor, and whose actual examinations were almost nonexistent.
 10. Arrogance and abusiveness toward Plaintiffs.
 11. Continuous insistence on the validity of Defendants' maintained, arbitrary and insubstantially based denial of all medical benefits, contrary to medical fact.
 12. A reckless endangerment of Plaintiffs' health, which has resulted in severe damages, by this pattern of fraud and extortion, and conspiracy to commit the fraud and extortion, among the named Defendants.
 13. A pattern of fraud and extortion causing Plaintiffs justified fear and anxiety over losses that caused both Plaintiffs to seek and continue to seek psychotherapy, as well as to force the litigation in New Jersey concerning performance, and further, the agony of this litigation, which addresses the fraudulent and extortionate means and intent by which Defendants still avoid performance.
 14. These patterns of racketeering activity began at approximately the same time that the physical damages were ascertained to be of a serious nature that would require surgery.
 15. These patterns of racketeering activity, fraud, conspiracy to commit fraud and extortion were committed using communications by mail.
 16. These patterns of racketeering activity, fraud, conspiracy to commit fraud and extortion were committed using communications by telephone and FAX.
- 41) Attachments A and B were received by NJDICC, assigned case numbers 95-78255 and 95-78257.
- 42) The investigator for NJDICC on these complaints was a Mr. Robert Only.
- 43) Plaintiff Hammel sent eight (8) fax updates to Mr. Only, who made it clear on first phone conversation that Plaintiff was not to call him personally.
- 44) Copies of these complaints were sent to New Jersey State Senator Byron Baer, and to New Jersey Representative Loretta Weinberg, the office of the Governor of New Jersey as well as

The Attorney General, and the State Insurance Department of New Jersey, among others.

- 45) The physical, emotional and financial conditions of both Plaintiffs, coupled with attempts to maintain and also sell the remaining video store business and the exhaustion from writing those two complaints, made it clear that Plaintiffs were in a situation incompatible with life. Plans were made to salvage what could be salvaged and move to the quiet mountains of North Carolina as a desperate attempt to preserve what was left of body, sanity and spirit.
- 46) To aid Plaintiffs in relocating, their long time friend Mr. Donald Walton of Rutherford, New Jersey lent a total of approximately \$15,000. This sum has yet to be repaid.
- 47) On or about January 18, 1996, Plaintiff Hammel received a phone call from Linda Matthews who said she was State Farm's Chief claim representative for Eastern New Jersey. She opened with, "I understand you are not satisfied with State Farm's handling of your claims."
- 48) The conversation with Ms. Matthews was pleasant, and Plaintiff regarded this, finally, as an act of good faith. The issue most fully discussed was that of State Farm's right to an IME, which neither Plaintiff had ever denied.

We agreed upon a suitable neurosurgeon for IME, a Dr. Andronico.
- 49) Copies of the complaint exhibits A and B were on or about January 18, 1996 in Defendants' possession and remain in Defendants' possession.
- 50) No answer, substantive affirmation or denial of any statement in Exhibits A and B were ever received from Defendants.
- 51) No answer, substantive affirmation or denial of any statement in Exhibits A and B were ever received from NJDICC.
- 52) There was never any indication, in the form of a report from NJDICC, ever seen by Plaintiffs, or seen by anyone with whom Plaintiffs have ever had any communication. There is no evidence then, nor indication nor any information that indicates that any investigation by NJDICC exists, or was ever performed.
- 53) After telephone conversation with Ms. Matthews on or about January 18, 1996, Plaintiff Bellamente immediately set upon the task of setting up an appointment with Dr. Andronico, but was declined appointments by his office staff saying that, "State Farm does not pay it's bills."
- 54) Since declining IMEs with Dr. Merliss in a letter dated November 2, 1995, no alternative physician had been suggested by Defendants, until Plaintiff Hammel's conversation with Ms. Matthews, on or about January 18, 1996
- 55) Plaintiff Hammel collected all the medical documents indicating substantial injury, need for treatment and logically sound objections to Defendants' continued denial of benefits, and faxed them all to Ms. Matthews, with a covering letter quoting the response from Dr. Andronico's office regarding IMEs for Defendants.
- 56) All documents sent to Ms. Matthews except the covering letter had been in Defendants' possession for months.
- 57) No further requests for IMEs have since come from Defendants.
- 58) The single remaining store began to fail from repeated closures because of Plaintiffs' incapacity or need for medical treatment.

Several attempts to sell the business failed.

Foreclosure on residence was clearly inescapable.

- 59) Plaintiffs liquidated whatever could be liquidated, borrowed money from friends, and moved to Graham County, NC with hope of mental restoration, physical rest and the ability to live more inexpensively and therefore longer.
- 60) On or about February 9, 1996, knowing of Plaintiffs' conditions, Mr. Andreas Michael of Teaneck, NJ, the landlord of the video store "Ultra Videos" 288 Teaneck Road in Ridgefield Park NJ, had the premises sealed by the Sheriff, for back rent.

The rent owed was considerably less than the value of the contents of the store.

Plaintiffs were forbidden entry and lost valuable personal effects as well as personal and financial records, as well as the business itself.

Among the items lost was the signed contract for the move from New Jersey to North Carolina.
- 61) Plaintiffs left New Jersey on February 11, 1996, leaving the last day of loading to a long time friend Mr. Thomas Thayer; Plaintiffs arrived in Robbinsville, Graham County, NC on February 12, 1996.
- 62) The Movers, Mountain Movers of Sylva, North Carolina who were hired for the move of household items from New Jersey to North Carolina, despite receiving a most complete inventory, failed to move one (1) out of four (4) floors of valuable personal effects. All those items were lost, among them all Plaintiff's financial records.
- 63) Fully 75% of what was moved had to be kept in storage for well over one year.
- 64) When the stored items were finally unpacked, it was discovered that many valuable and irreplaceable items were absent, or damaged.
- 65) Plaintiff Bellamente was an owner of the house in which both Plaintiffs lived, while Plaintiff Hammel paid rent but also contributed \$10,000 to the downpayment in purchase of this house, while retaining no ownership under title. This house was foreclosed on and auctioned at Sheriff's sale at some time after the move to North Carolina.
- 66) On leaving New Jersey, Plaintiffs left the insurance claim, and whatever could be done regarding sale of the video store, and reasoning with Mr. Michael, in the hands of Plaintiffs' attorney at that time John C. Gavejian, whom Plaintiffs had known for years.
- 67) For some still unknown reason, Mr. Gavejian did not file a PIP suit, and became uncommunicative and unavailable.
- 68) Even while in North Carolina, Plaintiff Hammel maintained correspondence with New Jersey State Senator Byron Baer.
- 69) Response from the New Jersey Department of Insurance finally arrived, which amounted to nothing.
- 70) Senator Baer sent a copy of the report to Plaintiff Hammel as sad tidings; a copy was also received from The New Jersey Department of Insurance.
- 71) In further correspondence with Senator Baer, the Senator agreed that this was not, in fact, a report.
- 72) As the statute of limitations was approaching, Plaintiffs had to find a new attorney, and eventually did so through NJATLA: Paul Jackson, Esq. for Plaintiff Hammel, and Alan Genitempo, Esq. for Plaintiff Bellamente, who currently are handling the PIP and UIM cases in NJ.
- 73) Though the trip was physically arduous, stressful and expensive, there was no choice but that we meet with Mr. Jackson in New Jersey.

- 74) It was clear that both Plaintiffs had to find a good neurosurgeon, and searched out Dr. Michael M. Haglund, who had been identified indirectly through Dr. David J. Adams as a very good neurosurgeon, and neurologist. Plaintiffs sought one specifically in North Carolina, and one at Duke University Medical Center because of its reputation of excellence.
- 75) In order to conserve Plaintiffs' energy and finances as much as possible, on the way back to North Carolina, Plaintiffs arranged to see Dr. Haglund at DUMC.
- 76) Scheduling of Plaintiff Hammel's surgery was made for September 25, 1996.
- 77) Although Plaintiffs were both assured by various people, one of whom was Joanne Johnson, of DUMC's billing department that given the seriousness of the surgery and Dr. Haglund's reputation, Defendants would surely agree to the surgery, Defendants stood on their unwarranted denial again saying, "the case is closed".

Plaintiffs arrived on September 24, 1996 at DUMC prepared for Plaintiff Hammel's surgery, only to be told of Defendants' continuing and fraudulent denial of clearly necessary medical treatment.

- 78) Both Plaintiffs applied for SSI benefits because of disabilities on or about May 9, 1996. Plaintiff Bellamente received certification on or about July 8, 1996; Plaintiff Hammel received SSI certification on or about January 12, 1997. Both certifications were retroactive to the date on which Plaintiffs' bank balance dropped below \$1,000.00.
- 79) Plaintiffs' surgeries were rescheduled under Medicaid:
Plaintiff Hammel on May 13, 1997
Plaintiff Bellamente on June 24, 1997
and performed thereon by Dr. Michael M. Haglund.
- 80) Plaintiffs were required to travel to New Jersey for Defendants' depositions of Plaintiffs which took place regarding the PIP and UIM matters, on February 25, 1998 from 2:00 PM to 8:00 PM.
- 81) While in New Jersey, for those depositions, both Plaintiffs were thoroughly examined, at Plaintiffs' own expense, by Dr. David Adams. Dr. Adams confirmed Dr. Haglund's diagnosis of atrophied spinal cord of Plaintiff Hammel, and suggested that the the drug Neurontin (gabapentin) might be useful for relief of some of the various bodily dysesthesias that originate from the atrophied cord.
- 82) While in New Jersey for depositions, Plaintiff Hammel was thoroughly examined, at Plaintiff's own expense, by Dr. Gilbert Kepecs, Rheumatologist, concerning Plaintiff's Right Shoulder.

Dr. Kepecs confirmed the continued existence of inflammation of Plaintiff Hammel's Right Shoulder which had gone untreated since Defendant's initial denial of all medical benefits.

In spite of several courses of physical therapy, range of motion and pain of the Right Shoulder had not improved enduringly.

- 83) While visiting with Dr. Kepecs, Plaintiffs' car received a long gouge which appears to have deliberately been made by someone with a screwdriver.
- 84) On return to North Carolina from Depositions in New Jersey, Plaintiff Hammel had to have his rectum and lower colon manually disimpacted at Harris regional Hospital.
- 85) Final Physical Conditions of Plaintiffs as a result of Defendants' actions:
- Numerous and incapacitating sequelae, including, but not limited to:

1. Plaintiff Hammel
 - a) Extreme vulnerability of C-cord
 - b) Painful and weakened neck muscles
 - c) Painful and weakened upper back and shoulder muscles.
 - d) General muscle atrophy and weakness, most notable in abdominals, causing the already injured L-spine to be painfully deformed which is exacerbated by the weakened muscles of lumbar region.
 - e) Extreme difficulty in walking
 - f) Bowel and Bladder dysfunction
 - g) Sexual dysfunction
 - h) Loss of coordination, balance and position sense
 - i) Great alteration in the sense of touch
 - j) Extreme burning pain in hands
 - k) Extreme sensitivity to cold
 - l) Extremely diminished stamina

2. Plaintiff Bellamente
 - a) Weakened and painful neck
 - b) Loss of range of motion in neck
 - c) Painful and weakened shoulders
 - d) Periodic hand pain
 - e) Sudden onsets of painful right deltoid spasm
 - f) weakened and painful lumbar back
 - g) painful mid back
 - h) dysaesthetic left foot with loss of proprioception
 - i) difficulty walking
 - j) bladder dysfunction
 - k) penile malaesthesia

85) Physical therapy without enduring results:
Both Plaintiffs have no enduring results from several courses of physical therapy.

86) Continued psychotherapy:
Both Plaintiffs remain in psychotherapy as a result of Defendants' actions and the multitudinous sequelae of those actions that grow like the roots of a tree.

V. LEGAL POSITION AND SUMMARY OF SPECIFICS

- 87) This case presents a distinction between a contractual obligation, and how, and with what intent that obligation is, or is not, performed. A case of "simple" fraud, bad faith, breach of contract, etc. is one thing; the underlying pattern of racketeering that produces the surface appearance of these simple symptoms is a different and separate matter, and one which can fall under federal jurisdiction. In this case, Plaintiffs claim this situation exists.

- 88) In this case there are actions already pleaded by attorneys Paul Jackson for Plaintiff Hammel, and Alan Genitempo for Plaintiff Bellamente, for performance by Defendants. These are matters which fall under New Jersey's right to regulate insurance.

- 89) Here, Plaintiffs plead not on the issue of performance, but rather on the issue of the pattern of actions, motives and intent of nonperformance, all of which extends into the area of due process, and its denial.

- 90) Plaintiffs allege, most generally, that underlying the symptoms of this clear nonperformance is a motive and pattern of extortion and racketeering activity, from which Defendants do derive, and knew or should have known that they did derive, great financial benefit, even if perpetrated on only a small percentage of claimants.

- 91) It stands to reason that these violations of RICO and Hobbs in a pattern of racketeering activity could not have been applied with such aplomb, and systematic consistency to Plaintiffs, without inferring that Defendants have these systems and patterns of racketeering activities internally institutionalized in such a way that this is their "pattern of doing business".

92) Indeed, there are other examples of these very same patterns being used with others of Defendants' policyholders who make legitimate claims.

VI. AS AND FOR CAUSES OF ACTION, PLAINTIFFS HEREIN
COMPLAIN MORE SPECIFICALLY UPON U.S. CODE, COMMON LAW,
AND THE CONSTITUTION OF THE UNITED STATES,
OF DEFENDANTS':

93)

1. CONSPIRACY TO VIOLATE, AND VIOLATIONS OF

a) 18 USC 1961-1968a (RICO)

as well as violations of

b) 18 USC 1951 (Hobbs Act),

2. Tortious Interference with Contract,

3. Abuse of the Legal Process,

4. Malicious and Damaging Persecution,

5. Malicious denial of due process,

and seek relief from the Court for:

continuing violation, and for proximate damages caused thereby, as outlined below. In order to conform to FRCP Rule 8, and not to burden the Court, the outline in this complaint contains only statements, together with documentation, of the small number of predicate acts that are required under RICO and Hobbs in order to void the anticipated motion to dismiss on the basis of insubstantiality. Supporting documents submitted now are only a demonstration to the court that this complaint has genuine merit, is not an exercise in legal sophistry, and more importantly that it is substantive in law and in damages.

94) Plaintiffs allege that the "predicate acts" of 98) under both RICO and Hobbs, do establish a pattern of racketeering, and extortion, by Defendants which constitute the "enterprise".

95) A "Pattern of Racketeering activity" is defined to be a pattern that has both continuity and relationship. This pattern began on or about July 26, 1995 with Defendants' multiple letters of denial to both Plaintiffs; it continues to this moment, and there is certainly a threat that such activity will continue into the future. The activities of racketeering continue, and there is no evidence available to Plaintiffs that even suggests discontinuance of these activities. Continuation of this pattern by Defendants is also a continuation of damages to Plaintiffs.

96) Plaintiffs further allege that this pattern contains a sequence of events, over years, that all have the same and common purpose, and that that purpose is one of egregiously deliberate, calculated and malicious, fraud and extortion which is a "pattern of racketeering activity".

97) The particular complaints of RICO and Hobbs violations, i.e., instances of predicate, and explicitly prohibited acts, for each plaintiff, as documented assertions, are as follows:

98) Plaintiff Alan J. Bellamente alleges patterns of,

1. FRAUD:

Malicious, reckless and unwarranted denial of medical benefits, in the face of the written declarations of

David J. Adams, M.D., Neurologist
Robert C. Rubin, M.D., Neurosurgeon
John F. Pojedinec, M.D., Orthopaedic Surgeon

to Defendants that surgery was required for neural decompression, which compression was a consequence of the MVA. The delay in surgery due to the persistent pattern of racketeering activities has produced permanent neurological injuries.

2. CONSPIRACY TO COMMIT FRAUD:

- a) Claims adjusters named in Exhibits A and B, believed by Plaintiffs to be part of an internal group, all acted in agreement and concordance, both written and spoken in the activities of 40).
- b) On information and belief, Sandra Romei, supervisor to this group, never indicated any variance from or disapproval of these activities.
- c) Assuming that Linda Matthews presented herself correctly as Defendants' claims representative for Eastern New Jersey, she did not respond to either the factual medical information sent to her, or to the refusal for IME by Dr. Andronico's office; nor did she make any attempt to stop or condemn the activities of 40). Only her consent and aid can be presumed.
- d) It is highly unlikely, within any corporate structure, that a person with Ms. Matthew's assumed authority could act independently and without guidance in corporate policy from yet higher authority.
- e) Further refusal by the parent company to address, correct or condemn the activities of 40) is once again, a token of consent and aid to these activities.

3. EXTORTION:

The fear inducing continuation of the above malicious denial which exists to this moment, continuing delays, and abuse of process, are all causes for this Plaintiff to remain in psychotherapy, in addition to the requisite therapy for PTSD stemming from the MVA.

4. MAIL FRAUD:

The U.S. mail was used as an instrument of the initial fraud, conspiracy to commit fraud, and in the continuation of this fraud and fear inducing extortion.

5. WIRE FRAUD:

Both telephone and FAX were used in the continued fraud, conspiracy to commit fraud, and in the continuation of this fraud and fear inducing extortion.

99) Plaintiff William C. Hammel alleges patterns of,

1. FRAUD:

Malicious, reckless and unwarranted denial of all medical benefits by Defendants, on or about July 26, 1995, the same time as Plaintiff Bellamente, not only without cause, but in contradiction to Defendants' own IME.

Subsequent denial by Defendants of necessary cervical surgery at Duke University Medical Center, which surgery was deemed medically necessary and scheduled for September 25, 1996 by Michael M. Haglund, M.D., Ph.D, Neurologist, Neurosurgeon. Dr. Haglund's decision was based on thorough neurological examination, and MRIs that were taken well before Defendants' total denial of all medical benefits. Dr. Haglund's diagnosis was corroborated by David J. Adams, M.D., Neurologist. The delay in surgery, due to the persistent pattern of racketeering activities has produced serious, permanent, degenerative and disabling injuries to the cervical spinal cord (atrophy). The surgery was finally performed May 13, 1997.

2. CONSPIRACY TO COMMIT FRAUD:

Repeat 98).2.

3. EXTORTION:

The fear inducing continuation of the above malicious denial which exists to this moment, continuing delays, and abuse of process, are all causes for this Plaintiff to remain in psychotherapy, for an original and continuing

diagnosis of "severe anxiety", in addition to the requisite therapy for PTSD stemming from the MVA.

4. MAIL FRAUD:
Repeat 98).4

5. WIRE FRAUD:
Repeat 98).5

100) From this continuing, egregious and malicious pattern of racketeering and extortion by Defendants, in violation of RICO and Hobbs, and also because Defendants are:

1. in violation of contractual fiduciary duty, before and through the litigation process of the cases cited in 17),
2. as well as common laws prohibiting fraud, extortion and theft,

Plaintiffs allege further that as a proximate cause of Defendants' Pattern of Racketeering activities, Plaintiffs have suffered, great, permanent and irreparable physical, psychological, emotional, spiritual and financial harm and damage, all of which has left Plaintiffs destitute, unable to work and unable to live as independent and productive human beings.

101) Plaintiffs allege that the people, and governmental entities of the United States which Plaintiffs have named, and on behalf of whom Plaintiffs also complain, have also been personally and financially damaged, through their sense of justice, and in their attempt to mitigate and contain, to the best of their ability, the damages of proximate cause that have been maliciously and insistently inflicted by Defendants, on Plaintiffs, over a period of approximately four (4) years.

VII. REGARDING THE RACKETEERING "ENTERPRISE": FRCP 19(c)

102) While Plaintiffs understand that the whole of this enterprise necessarily extends to The New Jersey Department of Insurance Consumer Protection, also to the New Jersey Department of Insurance, now called The New Jersey Department of Insurance and Banking, and even to the Government of the State of New Jersey, Plaintiffs decline to request waivers of State's rights provided under the Eleventh Amendment of the Constitution of the U. S., and so do not include these as Defendants in this action at this time.

VIII. RELIEF SOUGHT:

103) Any relief from continuing racketeering and extortion activities: the prohibited acts of RICO and Hobbs, under intervention provided in 28 USC 1367, that the court can give.

Plaintiffs understand that, ultimately from amendments III and XI of the constitution and by U. S., Sup. Ct. precedent, this court may not remove the Cases cited in 17), in the State of New Jersey to this Federal District Court, thus interfering with the State's right to regulation of insurance granted by 15 USC 20 (The McCarran-Ferguson Act), but Plaintiffs see no reason why Federal intervention by way of court order is not allowed and appropriate when the actions (the how, not the what) of the Defendants' actions are in violation of US Code, and when such U.S. Code automatically has Federal District Court jurisdiction.

104) Compensatory Relief in the form of \$60,000,000.00 for direct and proximately caused damages to life, limb, well being and finances of Plaintiffs stemming from Defendants' actions, as will be outlined and apportioned, which damages will have such lifelong irreparable effect as severe pain, severe disabilities and severe impairments, that permanently prohibit Plaintiffs from being self supporting, productive individuals.

105) Such compensatory damages, plus interest, as may be verified and claimed by the persons and entities upon whose behalf Plaintiffs also complain, by virtue of existing contractual

agreements, in accordance with FRCP Rule 71;

- 106) Any and all interest accrued by debt to the Internal Revenue Service of the U. S., during the period of continuing pattern of racketeering activity, by virtue of Defendants' destruction of Plaintiffs' ability to pay the initial debt.
- 107) Any damages, plus interest, that may be payable and due, to the Court itself, in compensation for whatever relief the Court itself may have accorded the Plaintiffs; this, since Plaintiffs' inability to defend themselves otherwise is a direct consequence of the Plaintiffs' destitution, which is caused by the unabated insistence on a clear pattern of racketeering activity engaged in within the "enterprise" that includes claimed "insurance".
- 108) All Plaintiffs' Costs in this litigation, and as well, just compensation for the destructive and onerous work and effort that has been forced, under duress and extortion, upon Plaintiffs by Defendants' actions; Plaintiffs request special consideration from the court in a determination of attorneys' fees, by the court, in recognition of the work done, and cost of necessary tools required to act as attorneys, Pro Se.
- 109) Restitution of all Premiums paid to Defendants, over and above that which was paid as any minimum required by State Law, for any services that Defendants have purported to provide, over any time that State Farm has ever been paid for such purported services.

[Given, that these purported services, which have been provided in return for this money, were "insurance" in name only, and that Defendants' statement to the contrary was an act of deliberate and calculated fraud, which fraud violates and abrogates any agreement that may, in any way, be construed as contractual from any "insurance policy" with State Farm. Plaintiffs entered this agreement with good faith, while Defendants entered it not only with "a priori" bad faith, but with "a priori" design of fraud and design of extortion: this just happens to be Defendants' "way of doing business" which Plaintiffs understand as the very definition of a pattern of racketeering activity that goes well beyond the mere "pattern" that is understood, in multiple definitions by the various Courts of the United States.]

- 110) And finally, any further damages of whatever kind that the Court may deem suitable, just or appropriate, to Plaintiffs, the Court, or any persons or entities upon whose behalf the Plaintiffs also complain.

IX. DEMAND FOR JUDGMENT AND TRIAL BY JURY

- 111) On the basis of all the foregoing, Plaintiffs demand judgment for the stated relief, in trial by jury.

X. PLAINTIFFS' AVERMENT REGARDING RULE 11, FRCP

- 112) Further extant evidence and argumentation, elucidating the pattern of racketeering activity, and information which will be acquired in the process of discovery, will establish the necessary preponderance of evidence as is required by the Court in accordance with the Federal Rules of Civil Procedure.
- 113) In particular, with regard to Rule 11 of FRCP, Plaintiffs aver that all statements and allegations are true upon information, belief, and reasonable investigation, and further that this action is not brought with any purpose to harass or defame Defendants, and further that it is not of any nature that could be called frivolous.
- 114) Plaintiffs have, in good faith, attempted to balance the the necessary requirements of specificity and particularity, under Rule 9(f) of FRCP to establish sufficiency of this pleading, with the requirements of concision and directness under Rule 8(e) of FRCP, all in accordance with Rule 11 of FRCP.

A-11 Moose Branch Road,
Sweetwater Apartments 1A,
Robbinsville, NC 28771
(828) 479-1547

A-11 Moose Branch Road,
Sweetwater Apartments 8A,
Robbinsville, NC 28771
(828) 479-1547

William C. Hammel

Alan J. Bellamente

DATE:

DATE:

[Top of Page](#)

[Home Page](#)

[Insurance Page](#)

[Uncivilization and its Discontents](#)

[Essay Page](#)

[Email me, Bill Hammel at](#)

bhammel AT graham DOT main DOT nc DOT us **READ WARNING BEFORE SENDING E-MAIL**

The URL for this document is:

<http://graham.main.nc.us/~bhammel/RICO/complaint.html>

Created: August 13, 1999

Last Updated: May 28, 2000