



ADAMS V ALLSTATE
(ALL-IN-ONE)

Official Copies!!!

Last Entry: 10/4/2023

E: TextBookDiscrimination@gmail.com
W: www.TextBookDiscrimination.com

visit TBD's [website](#) for the most up-to-date information

TABLE OF CONTENTS | ADAMS V ALLSTATE

#	ID	Caption	Doc	Page
1	0061-01	<i>Adams v Allstate, 2:02-cv-02610</i>	C	4
-	Appendix			36



DISCRIMINATION LAWSUITS FILED AGAINST
ALLSTATE INSURANCE COMPANY

SOVEREIGN: US | Federal

CIRCUIT: 11th Circuit

DISTRICT: USALND



0061-01

ADAMS v ALLSTATE

2:02-CV-02610

CAPTION: *Adams v Allstate*, 2:02-cv-02610 (USALND 2002)

DISTRICT: USALND

CASE NO: 2:02-cv-02610

CASE TYPE: Employment Discrimination

CHARGES: age

WEBPAGE: 0061_01.html

DOCKET: <https://ecf.alnd.uscourts.gov>

DOCKET ENTRY: {#1}

DOCUMENT: Complaint

DATE: 10/23/2002

PAGES: 31



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

FILED
OCT 23 PM 4:01

U.S. DISTRICT COURT
N.D. OF ALABAMA

GEORGE ADAMS,)
)
Plaintiff,)
)
v.)
)
ALLSTATE INSURANCE COMPANY,)
)
and BRAD RANKIN)
)
Defendants.)

Civil Action No. _____

CV-02-B-2610-S

NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants Allstate Insurance Company and Brad Rankin hereby file this Notice of Removal of this action from state court pursuant to 28 U.S.C. §§ 1441(a), and in support thereof respectfully shows the following:

I. INTRODUCTION

On or about September 9, 2002, plaintiff George Adams filed a civil action against defendants Allstate Insurance Company ("Allstate"), Brad Rankin, and various unnamed fictitious defendants in the Circuit Court of Jefferson County, Alabama, Bessemer Division entitled *George Adams v. Allstate Insurance Company, Brad Rankin, and Fictitious Defendants "A," "B," "C," "D," "E," and "F"*, Cv. No. 02-1239. Defendant Allstate Insurance Company was served with a copy of the summons and complaint (a copy of which is attached as Exhibit A) on September 23, 2002, the first date on which defendant Allstate Insurance Company or any of its agents or representatives had actual notice of this action. Defendant Brad Rankin was served with a copy of the summons and complaint, (attached hereto as Exhibit A) on September 27, 2002, the first date on which defendant Rankin or any of his agents or representatives had actual

|

notice of this action. As required by 28 U.S.C. § 1446(b), this notice of removal is filed within thirty (30) days after notice to defendant that plaintiff's complaint states facts and claims from which it may be ascertained the case is federal in character and removable to this Court. *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999).

Plaintiff's complaint purports to state claims against defendants under Alabama law for age discrimination, breach of contract, intentional interference with business relations, intentional infliction of emotional distress, and conspiracy. This Court has jurisdiction over the subject matter of this lawsuit under 28 U.S.C. § 1332(a) because (1) diversity of citizenship exists between all properly joined defendants and plaintiff, and (2) the amount in controversy exceeds \$75,000, exclusive of interest and costs. Removal of this case is therefore proper under 28 U.S.C. § 1441(a).

II. FACTUAL BACKGROUND

Plaintiff operates as an insurance agent for Allstate pursuant to the R3001 contract. Complaint ¶ 7. On the date this action was filed, plaintiff was a citizen of the state of Alabama. Complaint ¶ 1. On the date this action was filed, defendant Allstate was a foreign corporation, incorporated under the laws of Illinois and having its principal place of business in Northbrook, Illinois. Complaint ¶ 2; Sullivan Declaration ("Sullivan Dec.") ¶ 1 (attached hereto as Exhibit B). Defendant Rankin is an employee of Allstate, serving as the Territorial Manager for the geographic region that includes plaintiff's agency (the "Adams Agency"). Sullivan Dec. ¶ 2. On the date this action was filed, defendant Rankin was a citizen of the state of Alabama.

The R3001 agreement between the Adams agency and Allstate "is the sole and entire agency agreement between the Company and Agency..." George Adams Agency, Inc. R3001C

Exclusive Agency Agreement (“Adams Agency R3001 Agreement”) ¶ I.B (attached as Exhibit 1 to Sullivan Dec.). The contract expressly states that the terms of their R3001 agreement

may not be modified except by a written agreement between the Company and Agency which expressly states that it modifies this Agreement. No other written statements, representations, or agreements and no oral statements, representations, or agreements will be effective to modify this Agreement. No representative of the Company will have authority to modify this agreement, except as provided in this Section XXI.

Adams Agency R3001 Agreement ¶ XXI.C.

Each of plaintiff’s causes of action is based on the alleged improper denial of his efforts to purchase the economic interest of another Allstate insurance agent, the Don Hunter Agency. Complaint ¶¶ 22-23, 27-28, 31-32, 35, 40. Under the terms of the R3001 agreements executed by plaintiff and the Don Hunter Agency, their agencies “ha[ve] an economic interest... in [the] Allstate customer accounts developed under the agreement.” Adams Agency R3001 Agreement ¶ XVI.B; *see also* Donald O. Hunter Agency R3001C Exclusive Agency Agreement (“Hunter Agency R3001 Agreement”) ¶ XVI.A-B (attached as Exhibit 2 to Sullivan Dec.). Agents operating under the R3001 contract may sell this interest to an approved buyer. *Id.* Plaintiff’s complaint alleges that “Plaintiff was qualified to purchase the [Don Hunter] Agency as a matter of fact and law, and the Defendants had no legal, equitable, or other right to insist on any qualifications.” Complaint ¶ 17. Pursuant to the express language of the agreement, however, Allstate “retains the right in its exclusive judgment to approve or disapprove such a transfer. Any failure to disclose and obtain the prior written approval of the Company for any transfer of Agency’s interest... shall constitute a breach of this contract...” Adams Agency R3001 Agreement ¶ XVI.B; *see also* Hunter Agency R3001 Agreement ¶¶ XVI.A-B (“[Y]ou may not execute a transfer of your interest in this Agreement..., without the prior written approval of the

Company.... The Company retains the right in its exclusive judgment to approve or disapprove such a transfer”).

Plaintiff's complaint seeks damages for age discrimination, breach of contract, intentional interference with business relations, intentional infliction of emotional distress, and conspiracy. Complaint ¶¶ 25, 29, 33, 38, 42. Plaintiff's requested relief includes compensatory damages for loss of income, future income, financial benefits, and anxiety, humiliation, pain, suffering, and mental anguish, as well as punitive damages, interest, costs, and attorney's fees. *Id.* The complaint, however, fails to identify the amount of damages claimed by plaintiff.

III. PLAINTIFF'S ACTION SATISFIES THE AMOUNT IN CONTROVERSY REQUIREMENT OF 28 U.S.C. § 1332(a)

Plaintiff's action satisfies the first requirement of diversity jurisdiction under 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000. Federal courts have original jurisdiction over actions between diverse parties where the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a). Where, as here, a complaint requests an unspecified amount of damages, removal of the case under § 1332(a) is proper where the defendant demonstrates by a preponderance of the evidence that the amount in controversy satisfies the jurisdictional minimum. *Tapscott v. MS Dealer Serv. Corp.*, 77 F.3d 1353, 1357 (11th Cir. 1996), *overruled on diff. grounds* 204 F.3d 1069 (11th Cir. 2000). To satisfy this burden, a defendant may offer affidavits to show that it is more likely than not that the amount in controversy is in excess of \$75,000, or present decisions rendered in comparable cases that resulted in liability in excess of \$75,000. *See, e.g., Walker Petroleum v. CSX Transportation, Inc.*, 2001 WL 102359 at *1 (S.D. Ala. Jan. 12, 2001). The affidavits submitted by defendants and a review of comparable cases establish that plaintiff is seeking damages far in excess of \$75,000.

A. Plaintiff's Action Seeks in Excess of \$75,000 in Compensatory Damages

Plaintiff's claims for compensatory damages request far more than the threshold amount necessary for diversity jurisdiction. Plaintiff seeks lost income, future income, "financial benefits," and damages for anxiety, humiliation, pain and suffering based on his claims of discrimination, breach of contract, intentional interference with business relations, intentional infliction of emotional distress, and conspiracy. Complaint ¶¶ 25, 29, 33, 38, 42. These damage claims arise out of plaintiff's failed attempt to purchase an economic interest in the customer accounts of the Don Hunter Agency. *Id.* Following the purchase of this economic interest, plaintiff would receive commissions from the renewals of insurance policies by these customer accounts, as well as any new sales of insurance or financial products that plaintiff could generate through these accounts. Sullivan Dec. ¶ 7. The Don Hunter Agency generated in excess of \$68,000 in new business and renewal commissions in 2001. Sullivan Dec. ¶ 6. Even if plaintiff only sought damages for lost income and future income over a two-year period, the requested damages could exceed \$140,000. Thus, plaintiff's request for damages for lost income alone satisfies the \$75,000 threshold for diversity jurisdiction.

Plaintiff's request for compensatory damages for emotional distress also place the amount in controversy above \$75,000. In cases seeking damages for emotional distress caused by the humiliation of age discrimination, emotional distress awards in this Circuit and others typically exceed \$150,000. *See Munoz v. Oceanside Resorts, Inc.*, 223 F.3d 1340 (11th Cir. 2000) (plaintiff awarded \$150,000 in compensatory damages for emotional distress caused by age discrimination); *Koster v. Trans World Airlines*, 181 F.3d 24 (1st Cir. 1999) (upholding award of \$250,000 in compensatory damages for emotional distress caused by age discrimination). Where a plaintiff's age discrimination claims are found to be meritless, but the

plaintiff nonetheless prevails on a claim of intentional infliction of emotion distress, the damage award is likewise frequently in excess of \$150,000. *See Hill v. Noram Investments, LLC*, 182 F.2d 932 (10th Cir. 1999) (affirming \$159,330 award for intentional infliction of emotional distress in case alleging age discrimination). Plaintiff's request for emotional damages, like his allegations regarding lost income, places the amount in controversy well in excess of \$75,000. Plaintiff's compensatory damage requests alone thus satisfy the jurisdictional requirement.

B. Plaintiff's Action Seeks in Excess of \$75,000 in Punitive Damages

Plaintiff's demand for punitive damages based on allegations of intentional infliction of emotion distress also independently satisfies the diversity jurisdiction threshold.¹ The Eleventh Circuit recently upheld as reasonable punitive damages of \$400,000 for plaintiffs succeeding on claims of both discrimination and intentional infliction of emotional distress. *Middlebrooks v. Hillcrest Foods, Inc.*, 256 F.3d 1241 (11th Cir. 2001). The approach to punitive damages utilized by Alabama courts likewise shows that the punitive damages sought in this case are in excess of \$75,000. The Alabama Supreme Court recently endorsed a presumed punitive-to-compensatory damages ratio of 3 to 1. *See, e.g., National Ins. Assoc. v. Stockwell*, 2002 Ala. Lexis 91, at *70 (Ala. Mar. 15, 2002). As noted above, compensatory damages for intentional infliction of emotional distress often exceed \$150,000 in cases involving allegations of age discrimination. *Hill*, 182 F.2d at 932 (affirming \$159,330 award for intentional infliction of emotional distress in case alleging age discrimination). Based on Alabama's presumed punitive damages ratio, plaintiff's potential range of punitive damages thus far exceeds the jurisdictional threshold,

¹ Plaintiffs may seek punitive damages for the intentional infliction of emotion distress, also referred to as "outrage," under Alabama law. *See Busby v. Truswal Sys. Corp.*, 551 So.2d 322, 328 (Ala. 1989).

which would be satisfied if plaintiff sought only \$20,000 in compensatory damages. Plaintiff's requested compensatory and punitive relief thus satisfies the jurisdictional requirements of § 1332(a).

IV. PLAINTIFF'S ACTION SATISFIES THE DIVERSITY OF CITIZENSHIP REQUIREMENTS OF 28 U.S.C. § 1332(a)

Complete diversity exists between all properly joined parties to plaintiff's action, thereby satisfying the second prong of § 1332(a)'s diversity jurisdiction standard. Plaintiff's complaint admits that, at the time the complaint was filed, plaintiff was a citizen of Alabama and defendant Allstate Insurance Company was an Illinois corporation. Complaint ¶ 1-2. Allstate's principal place of business at the time of the filing of the complaint was in Illinois. Sullivan Dec. ¶ 1. Defendant Rankin is the only defendant that is a citizen of the state of Alabama. Plaintiff's attempt to fraudulently join defendant Rankin is an improper stratagem to defeat this diversity and avoid federal jurisdiction.

A. Fraudulent Joinder Standard

A plaintiff may not defeat diversity jurisdiction by fraudulently joining a non-diverse defendant. *See, e.g., Tillman v. R.J. Reynolds Tobacco*, 253 F.3d 1302, 1305 (11th Cir. 2001). A defendant has been fraudulently joined where either: (1) there is "no possibility that the plaintiff can establish a cause of action against the resident defendant," or (2) plaintiff's complaint "fraudulently ple[ads] jurisdictional facts to bring the resident defendant into state court."² *Crowe v. Coleman*, 113 F.3d 1536, 1538 (11th Cir. 1997). The proceeding to resolve fraudulent joinder is "similar to that used for ruling on a motion for summary judgment under Fed. R. Civ.

² When determining whether a case is removable under 28 U.S.C. § 1441(a), "the citizenship of defendants sued under fictitious names shall be disregarded." 28 U.S.C. § 1441(a).

P. 56(b).” *Id.* “If there is no arguably reasonable basis for predicting that state law might impose liability on the resident defendants under the facts alleged, then the claim is deemed fraudulent and lack of diversity will not prevent removal.” *Tedder v. FMC Corp.*, 590 F.2d 115, 117 (5th Cir. 1979).

To establish the lack of merit of plaintiff’s claims against a non-diverse party, a defendant may submit affidavits and other evidence for consideration by the court. *Crowe*, 113 F.3d at 1538. “The mere fact that the plaintiff’s complaint is silent as to some fact necessary to establish federal jurisdiction..., does not preclude removal of a case by the defendant... [I]f the plaintiff denies any material allegations contained in the petition for removal, then the burden rests with the defendant to prove them.” *Woolard v. Heyer-Schulte*, 791 F.Supp. 294,296 (S.D. Fla. 1992) (citing *Wright v. Cont. Casualty Co.*, 456 F.Supp. 1075 (M.D. Fla. 1978)) Otherwise, “a defendant’s statutory right to removal would be wholly contingent upon plaintiff’s choice of words.” *Woolard*, 791 F.Supp. at 296.

In this case, as demonstrated by the facts alleged in plaintiff’s complaint and the R3001 contract upon which plaintiff bases his action, plaintiff cannot establish any of the five causes of action asserted in the complaint against defendant Rankin.

B. Plaintiff Cannot Maintain a Cause of Action Against Defendant Rankin Under Ala. Stat. § 25-1-25

It is well-established under Alabama law that plaintiff cannot assert a cause of action against defendant Rankin, an employee of defendant Allstate, for age discrimination. Alabama’s age discrimination statute applies only to “employers” that are engaged in an industry affecting commerce and employ 20 or more workers. Ala. Stat. § 25-1-20(2). Plaintiff’s complaint does not allege that defendant Rankin is an employer under the statute, nor can plaintiff sustain any

such allegation. Defendant Rankin, as an employee of Allstate, cannot be an “employer” within the meaning of the Alabama Age Discrimination in Employment Act (“AADEA”). *See Mingus v. Bellsouth Mobility, Inc.*, 1999 U.S. Dist. LEXIS 17082, at *6-10 (S.D. Ala. Sept. 2, 1999) (no individual employee liability under AADEA). Plaintiff cannot maintain a claim against defendant Rankin under the AADEA, rendering his joinder of defendant Rankin on this claim fraudulent. *Id.*

C. Plaintiff Cannot Maintain a Breach of Contract Claim Against Defendant Rankin

Plaintiff’s breach of contract claim against defendant Rankin is also patently improper. In order to state a valid claim for breach of contract under Alabama law, a plaintiff must prove (1) the existence of a valid contract binding the parties in the action, (2) performance under the contract by the plaintiff, (3) the defendant’s nonperformance, and (4) damages. *State Farm Fire & Cas. Co. v. Slade*, 747 So.2d 293, 303 (Ala. 1999). Where a plaintiff “declares on a contract as made with the plaintiff by one of the defendants as agent of another defendant,” such as a contract allegedly entered into by an employee with a third party on behalf of his or her employer, “it states no cause of action against the agent defendant.” *Mobile Ins., Inc. v. Smith*, 441 So.2d 894, 897 (Ala. 1983) (citing *Gillis v. White*, 106 So. 166, 167 (1925)). “[A] joint action against both [the agent and the principal] involves a practical as well as a legal anomaly.” *Id.*

Plaintiff’s complaint does not and cannot state a claim for breach of contract against defendant Rankin. Plaintiff’s breach of contract claim centers on his inability to purchase the economic interest the Don Hunter Agency held in its “book of business” under the R3001 agreement. Complaint ¶¶ 27-28. Plaintiff does not allege that defendant Rankin entered into any

contract with plaintiff in his individual capacity, or that plaintiff provided defendant Rankin with consideration in exchange for any purported contractual obligations, much less that plaintiff performed his obligations under any such contract. *Slade*, 747 So.2d at 303. Indeed, defendant Rankin has never received any consideration from plaintiff in his individual capacity, nor entered into any contract with plaintiff in his individual capacity. Further, plaintiff may not, as a matter of law, bring a contract action against both Allstate and defendant Rankin based on any purported contract defendant Rankin, as an employee of Allstate, may have entered on behalf of Allstate. *Mobile Ins.*, 441 So. 2d at 897. Plaintiff's contract claim against defendant Rankin thus has no basis under Alabama law.

D. Plaintiff Cannot Maintain an Intentional Interference With Business Relations Against Defendant Rankin

Plaintiff's assertion of an intentional interference with business relations claim against defendant Rankin is likewise meritless. Plaintiff alleges that defendant Rankin "had knowledge of Plaintiff's right to purchase another Agent's interest in his books of business and the fact that Plaintiff met all requirements necessary to qualify for this purchase" and that defendant Rankin thereafter "interfered with business relations between Plaintiff and Don Hunter" by denying his request to purchase Hunter's economic interest. Complaint ¶¶ 31-32. Plaintiff's complaint conveniently omits, however, the express contractual conditions under which an R3001 agent may sell and purchase a book of business. Allstate "retains the right in its exclusive judgment to approve or disapprove such a transfer" of customer accounts. Adams Agency R3001 Agreement ¶ XVI.B; Hunter Agency R3001 Agreement ¶¶ XVI.A-B ("[Y]ou may not execute a transfer of your interest in this Agreement..., without the prior written approval of the Company.... The Company retains the right in its exclusive judgment to approve or disapprove such a transfer").

To the extent defendant Rankin even possessed the authority to “interfere” with plaintiff’s purchase of the Hunter Agency’s economic interest by denying approval of that purchase, his action was expressly authorized by plaintiff’s and the Hunter Agency’s R3001 contracts. *Id.* A plaintiff may not maintain a claim of intentional interference with business relations under Alabama law if the alleged “interference” involves the exercise of contractual rights by the defendant. *Colonial Bank v. R.D. Patterson*, 788 So.2d 134, 138-140 (Ala. 2000); *Bama Budweiser of Montgomery, Inc. v. Anheuser Busch, Inc.*, 611 So.2d 238, 247 (Ala. 1992). As the Alabama Supreme Court explained in *Colonial Bank*,

[W]hen tripartite relationships exist and disputes arise between two of the three parties, then a claim alleging interference by the third party that arise from conduct by the third party that is appropriate under its contract with the other two parties is not recognized.

788 So.2d at 138. A review of the facts of *Bama Budweiser* confirms the baselessness of plaintiff’s claim. In *Bama Budweiser*, the plaintiff claimed that Anheuser Busch, by unreasonably delaying approval of the transfer of assets from another franchisee to plaintiff’s franchise, improperly interfered with plaintiff’s purchase of the franchise. *Bama Budweiser*, 611 So.2d at 246-47. The Alabama Supreme Court held that plaintiff’s claim was meritless as a matter of law, because Anheuser Busch was contractually entitled to take the action alleged to constitute an improper business interference. *Id.* Plaintiff likewise cannot maintain a claim of intentional interference with business relations against defendant Rankin, because Allstate possessed the unlimited right to approve or disapprove such a transfer in its “exclusive judgment.” Adams Agency R3001 Agreement ¶ XVI.B; Hunter Agency R3001 Agreement ¶¶ XVI.A-B. Plaintiff’s intentional interference with business relations cause of action against defendant Rankin is therefore barred by Alabama law.

E. Plaintiff Cannot Maintain a Claim for Intentional Infliction of Emotional Distress Against Defendant Rankin

It is also impossible for plaintiff to recover against defendant Rankin based on his allegation of intentional infliction of emotional distress. A claim for intentional infliction of emotional distress, alternatively referred to as “outrage,” must, at a minimum, involve conduct by the defendant that (1) was intentional or reckless, (2) was extreme and outrageous, and (3) caused emotional distress so severe that no reasonable person could be expected to endure it. *Thrasher v. Ivan Leonard Chevrolet, Inc.*, 195 F.Supp.2d 1314, 1319 (N.D. Ala. 2002) (citing *Thomas v. BSE Indus. Contractors, Inc.*, 624 So.2d 1041, 1043 (Ala. 1993)). To be “extreme,” conduct must be “so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized society.” *Id.* After reviewing numerous cases involving claims of intentional infliction of emotional distress, courts have recognized that the Alabama Supreme Court has found only three limited circumstances in which a claim of outrage has been found to be potentially actionable: (1) wrongful conduct in the context of family burials; (2) where an insurance agent employs heavy-handed and “barbaric” means to coerce an insured into settling an insurance claim; and (3) egregious sexual harassment. *Whaley v. Sony Magnetic Prods., Inc. of Amer.*, 894 F.Supp. 1517, 1525 (M.D. Ala. 1995).

Whatever the role of defendant Rankin in the conduct alleged in plaintiff’s complaint, plaintiff has not stated a claim for intentional infliction of emotional distress under Alabama law. The allegations in plaintiff’s complaint do not fall within the limited situations that the Alabama Supreme Court has recognized as cognizable outrage. *Whaley*, 894 F.Supp. at 1525. Moreover, the conduct alleged by plaintiff, on its face, is not so “extreme and outrageous” and could not cause “emotional distress so severe a reasonable person could be expected to endure it” to

constitute intentional infliction of emotional distress as a matter of law. *See, e.g., Thrasher*, 195 F.Supp.2d at 1319 (alleged discrimination, including required overtime, intense scrutiny, and termination, based on plaintiff's pregnancy not outrage); *Robertson v. Ala. Dept. of Econ. and Comm. Affairs*, 902 F.Supp. 1473, 1488 (M.D. Ala. 1995). Defendant Rankin, to the extent he took any of the action alleged, simply asserted Allstate's rights under its R3001 agreements with plaintiff and the Hunter Agency. The denial of an opportunity to purchase an economic interest in insurance customer accounts, especially where the plaintiff was aware that the defendant had the contractual right to deny the sale, cannot be the basis for a claim of "extreme" conduct necessary to support a claim of intentional infliction of emotional distress in Alabama. Plaintiff's complaint thus fails to state a claim of intentional infliction of emotional distress against defendant Rankin.

F. Plaintiff Cannot Maintain a Claim of Conspiracy Against Defendant Rankin

Plaintiff's final claim, that defendant Rankin conspired to interfere with plaintiff's contractual relations and to commit age discrimination, also states an impossibility. A claim of civil conspiracy cannot stand on its own; "[a] plaintiff alleging conspiracy must have a valid underlying cause of action." *Callens v. Jefferson County Nursing Home*, 769 So.2d 273, 280 (Ala. 2000). "[A] conspiracy claim must fail if the underlying act itself would not support an action." *Triple J Cattle, Inc. v. Chambers*, 621 So.2d 1221, 1225 (Ala. 1993). As shown above, plaintiff cannot assert a valid cause of action of age discrimination or intentional interference with business relations under Alabama law against defendant Rankin. Moreover, defendant Rankin could not have conspired with Allstate, his employer and the only other identified defendant in this action, as a matter of law. A plaintiff may not base a civil conspiracy claim on an alleged conspiracy between an employer and employee. *Williams v. Marcum*, 519 So.2d 473,

474-75 (Ala. 1987); *see also Denney v. The City of Albany*, 247 F.3d 1172, 1190 (11th Cir.2001) (“[A] corporation cannot conspire with its employees, and its employees, when acting in the scope of their employment, cannot conspire among themselves.”) (citing *McAndrew v. Lockheed Martin Corp.*, 206 F.3d 1031, 1036 (11th Cir. 2000)). Thus, plaintiff’s inability to state a possible cause of action against defendant Rankin, and defendant Rankin’s status as an employee of the only identified potential co-conspirator, dooms plaintiff’s conspiracy claim.

G. Conclusion: Plaintiff Has Fraudulently Joined Defendant Rankin to Defeat Diversity Jurisdiction

Plaintiff’s complaint fails to state a claim for relief against defendant Rankin. Because plaintiff’s purported claims against defendant Rankin are barred by Alabama law, and thus there is “no possibility” that plaintiff can maintain an action against the only non-diverse defendant in this case, defendant Rankin’s fraudulent joinder cannot defeat removal of this action. *Tillman v. R.J. Reynolds Tobacco*, 253 F.3d 1302, 1305 (11th Cir. 2001).

V. SATISFACTION OF ADDITIONAL REMOVAL REQUIREMENTS

Pursuant to 28 U.S.C. § 1446(a), defendant has provided a copy of all process, pleadings, and orders served upon such defendant as attachments to this removal petition. A true and correct copy of the plaintiff’s original complaint is attached hereto as Exhibit A and a copy of plaintiff’s first interrogatories, first request for production of documents, and all other all other process, pleadings, and orders served upon defendants is attached hereto as Exhibit C. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this notice of removal is being given to all adverse parties promptly after the filing of this notice of removal, as indicated in the attached certificate of service. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this notice will be filed with the Circuit Court of Jefferson County, Alabama, Bessemer Division.

VI. CONCLUSION

Defendants Allstate Insurance Company and Brad Rankin have met their burden to establish federal jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), thereby entitling defendants to remove this case to this Court under 28 U.S.C. § 1441(a). Defendants respectfully request that this Court to assume jurisdiction over this case for all further proceedings.

Respectfully submitted,



David J. Middlebrooks
Albert R. Vreeland, II
Lehr, Middlebrooks, Price & Proctor, P.C.
2021 Third Avenue North, Suite 300
Birmingham, AL 35203
(205) 326-3002 – Telephone
(205) 326-3008 – Facsimile



Robert G. Lian, Jr.
Nathan J. Oleson
Akin, Gump, Strauss, Hauer & Feld, LLP
1333 New Hampshire Avenue, N.W., Suite 400
Washington, D.C. 20036
(202) 887-4000 – Telephone
(202) 887-4288 – Facsimile

October 23, 2002

Attorneys for Defendants Allstate Insurance
Company and Brad Rankin

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of October, 2002, a copy of defendants' Notice of Removal was served via U. S. Mail on counsel for plaintiff and via hand delivery on the Clerk of the Circuit Court of Jefferson County, Alabama, Bessemer Division.

F. Gusty Yearout
Yearout, Myers & Traylor, P.C.
800 Shades Creek Parkway
Suite 500
Birmingham, AL 35209

Clerk of the Court
Circuit Court of Jefferson County, Alabama
Bessemer Division
Room 506, Courthouse Annex
Bessemer, AL 35020



Albert L. Vreeland, II

IN THE CIRCUIT COURT OF JEFFERSON COUNTY,
BESSEMER DIVISION

GEORGE ADAMS,)
)
 PLAINTIFF,)
)
 v.) CV 02-1239
)
 ALLSTATE INSURANCE)
 COMPANY, INC.; BRAD)
 RANKIN, an individual;)
 and Fictitious Defendants)
 "A", "B", and "C", whether singular)
 or plural, being those persons, firms)
 corporations, or other entities)
 responsible for those allegations in)
 the Plaintiff's complaint; Fictitious)
 Defendants "D", "E", and "F",)
 whether singular or plural, being)
 those persons, firms, corporations,)
 or other entities that conspired with)
 the Defendants, whose true and)
 correct names are unknown to)
 Plaintiff at this time, but will be)
 substituted by amendment when)
 ascertained,)
)
 DEFENDANTS.)

SUMMONS

This service by Certified Mail of this Summons and Complaint is initiated upon written request of the Plaintiff's attorney pursuant to the *Alabama Rules of Civil Procedure*.

NOTICE TO: ALLSTATE INSURANCE COMPANY
 The Corporation Company
 2000 Interstate Park Dr., Suite 204
 Montgomery, AL 36109

The Complaint, Interrogatories and Request for Production which are attached to this Summons is important and you must take immediate action to protect your rights. You or your attorney are required to mail or hand deliver a copy of a written Answer, either admitting or denying each allegation in the Complaint to the Plaintiff's attorney, **J. Gusty Yearout, Esq., 800 Shades Creek Parkway, Suite 500, Birmingham, AL 35209. THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN THIRTY (30) DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.** You must also file the original of your Answer with the Clerk of this Court.

Date

Clerk

IN THE CIRCUIT COURT OF JEFFERSON COUNTY,
BESSEMER DIVISION

GEORGE ADAMS,

PLAINTIFF,

v.

ALLSTATE INSURANCE
COMPANY, INC.; BRAD
RANKIN, an individual;
and Fictitious Defendants
"A", "B", and "C", whether singular
or plural, being those persons, firms
corporations, or other entities
responsible for those allegations in
the Plaintiff's complaint; Fictitious
Defendants "D", "E", and "F",
whether singular or plural, being
those persons, firms, corporations,
or other entities that conspired with
the Defendants, whose true and
correct names are unknown to
Plaintiff at this time, but will be
substituted by amendment when
ascertained,

DEFENDANTS.

CV 02-1239

982 1968
2850
9100
0520
0016
7000

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only: No Insurance Coverage Provided)

Postage \$ 1.29
Certified Fee 2.30
Return Receipt Fee (Endorsement Required) 1.75
Restricted Delivery Fee (Endorsement Required) 3.50
Total Postage & Fees \$ 8.84

Postmark Here

Recipient's Name (Please Print Clearly) (To be completed by mailer)
Brad Rankin
Street, Apt. No., or PO Box No.
6006 Rosemont Rd
City, State, ZIP+4
Hoover, AL 35242

PS Form 3800, February 2000 See Reverse for Instructions

SUMMONS

This service by Certified Mail of this Summons and Complaint is initiated upon written request of the Plaintiff's attorney pursuant to the *Alabama Rules of Civil Procedure*.

NOTICE TO: Mr. Brad Rankin
6006 Rosemont Road
Hoover, Alabama 35242

The Complaint, Interrogatories and Request for Production which are attached to

this Summons is important and you must take immediate action to protect your rights. You or your attorney are required to mail or hand deliver a copy of a written Answer, either admitting or denying each allegation in the Complaint to the Plaintiff's attorney, **J. Gusty Yearout, Esq., 800 Shades Creek Parkway, Suite 500, Birmingham, AL 35209. THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN THIRTY (30) DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.** You must also file the original of your Answer with the Clerk of this Court.

Date

Clerk

FILED
CLERK
BESSEMER DIVISION

IN THE CIRCUIT COURT OF JEFFERSON COUNTY,
BESSEMER DIVISION

2002 SEP -9 PM 3: 30

GEORGE ADAMS,)

PLAINTIFF,)

v.)

ALLSTATE INSURANCE)

COMPANY, INC.; BRAD)

RANKIN, an individual;)

and Fictitious Defendants)

"A", "B", and "C", whether singular)

or plural, being those persons, firms)

corporations, or other entities)

responsible for those allegations in)

the Plaintiff's complaint; Fictitious)

Defendants "D", "E", and "F",)

whether singular or plural, being)

those persons, firms, corporations,)

or other entities that conspired with)

the Defendants, whose true and)

correct names are unknown to)

Plaintiff at this time, but will be)

substituted by amendment when)

ascertained,)

DEFENDANTS.)

EARL N. CARTER, JR.
CIRCUIT CLERK

CV 02-1239

COMPLAINT

COMES NOW the Plaintiff, George Adams, by and through his attorneys, and for his Complaint states as follows:

JURISDICTIONAL ALLEGATIONS

- 1. The Plaintiff, George Adams, is over the age of nineteen (19) years of age and is a resident of Jefferson County, Alabama.

2. The Defendant, Allstate Insurance Company, is a foreign corporation, incorporated under the laws of the State of Illinois, and at all material times herein, was qualified to do business under the laws of the State of Alabama.
3. The Defendant, Brad Rankin, is over the age of nineteen (19) years of age and is upon information and belief, a resident of Jefferson County, Alabama.
4. The Defendant, Allstate Insurance Company, is engaged in an industry affecting commerce, and has had in excess of 20 employees for each working day in each of 20 or more calendar weeks. The Defendant is therefore an employer within the meaning of § 25-1-20 Code of Alabama (1975).
5. Fictitious Defendants "A", "B", "C", "D", "E" and "F", whether singular or plural, are those other persons, firms, corporations, or other entities whose wrongful conduct caused or contributed to cause the injuries to the Plaintiff, all of whose true and correct names are unknown to Plaintiff at this time but will be substituted by amendment when ascertained.
6. The actions complained of in the complaint occurred in the Bessemer Division of Jefferson County, Alabama.

FACTS

7. The Plaintiff was employed by the Defendant and held the position of an Allstate R3001 Agent. Plaintiff has been an employee of Allstate for approximately thirty (30) years.
8. Although Allstate considers the Plaintiff to be an independent contractor, he is in fact an employee of Allstate in that they maintain dominance, control and

the other essential elements of employment.

9. Defendant Allstate required Plaintiff to sign a contract stating that he was an independent contractor, but in fact, even after the implementation of the independent contractor option, Defendant Allstate continued to apply its detailed work rules, control and domination requirements to Plaintiff. Therefore, Plaintiff is in fact an employee of Defendant Allstate.
10. Currently, a lawsuit is pending against Defendant Allstate by the Equal Employment Opportunity Commission, whereby the United States Government is claiming that Plaintiff and all other Agents of Defendant Allstate are in fact employees, not independent contractors.
11. Allstate, at all times, takes the position that the Plaintiff is an independent contractor.
12. Also in February of 2001, while employed by the Defendant, the Plaintiff entered into a contract to purchase The Don Hunter Agency (an Allstate agency).
13. Prior to entering into the contract with Don Hunter for the purchase of his Allstate agency, the Defendants and their officers, servants, agents, and employees, including, but not limited to Defendant Brad Rankin, essentially approved the Plaintiff for the purchase of the Don Hunter Agency. Plaintiff was repeatedly told to make the necessary arrangements for the purchase of this Don Hunter Agency, since he met all qualifications.
14. Defendant Rankin was responsible for effectuating, approving and facilitating

the purchase of the agency by the Plaintiff. Defendant Rankin negligently, wantonly, and intentionally failed and refused to so, and such failure was in violation of § 25-1-21 Code of Alabama 1975.

15. The Defendants, including Defendant Brad Rankin, from time to time misrepresented to the Plaintiff certain requirements and qualifications for the purchase of the agency, which requirements did not exist, in an effort to sabotage this transaction.
16. The Defendants refused to allow Plaintiff to purchase the Don Hunter Agency and arbitrarily, capriciously, and without cause, canceled the purchase agreement between the Plaintiff and the Hunter Agency under the pretense that the Plaintiff “did not qualify.”
17. The Plaintiff was qualified to purchase the Agency as a matter of fact and law, and the Defendants had no legal, equitable or other right to insist on any qualifications.
18. At this same time throughout the United States, younger, new hires (company employees), who did not have the qualifications of the Plaintiff, were being recruited and referred to the Hunter Agency as potential purchasers, by all of the Defendants.
19. The Hunter Agency was sold to a younger Allstate agent causing the Plaintiff significant loss of income, future income and other business opportunities.
20. The Defendants willfully and intentionally discriminated against the Plaintiff because of his age in violation of § 25-1-21 Code of Alabama (1975).

**COUNT I
(DISCRIMINATION)**

21. Plaintiff adopts and realleges each and every allegation contained in paragraphs one through sixteen as if set out fully herein.
22. As an employee of Defendant Allstate, Plaintiff had the right to purchase another Agent's interest in his book of business.
23. The Plaintiff had a contract with the Don Hunter Agency to purchase his insurance agency. The Defendants, Allstate, Rankin, and other unnamed fictitious Defendants, discriminated against Plaintiff by refusing to allow the Plaintiff to purchase the Don Hunter agency when Plaintiff was properly qualified to purchase said agency.
24. Defendants willfully and intentionally discriminated against Plaintiff because of his age in violation of § 25-1-21 Code of Alabama 1975.
25. As a direct and proximate result of the Defendants' wrongful acts, the Plaintiff has been deprived of income, future income, financial benefits, and suffered anxiety, humiliation, pain, suffering and mental anguish.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff demands judgment against the Defendants in an amount to be determined by the trier-of-fact, plus interest, costs, and attorney's fees.

**COUNT II
(BREACH OF CONTRACT)**

26. Plaintiff adopts and realleges each and every allegation contained in paragraphs one through twenty-one as if set out fully herein.

27. Defendants, Allstate and Rankin, owed a duty to Plaintiff to honor the written and oral agreements of Allstate Insurance Company which should have and would have allowed Plaintiff to purchase the Don Hunter Agency's book of business.
28. Under this contract, Defendant Allstate breached its written and oral contracts with Plaintiff when Defendant Rankin, as an agent of Defendant Allstate, refused to allow Plaintiff to purchase the Don Hunter Agency.
29. As a direct and proximate result of said breach by Defendant Allstate, the Plaintiff has been caused to suffer damages.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff demands compensatory damages in an amount to be determined by the trier-of-fact, plus interest, attorneys fees, costs, and other and further relief as may be determined by the Court.

**COUNT III
(INTENTIONAL INTERFERENCE
WITH BUSINESS RELATIONS)**

30. Plaintiff adopts and realleges each and every allegation contained in paragraphs one through twenty-five as if set forth fully herein.
31. Defendants Allstate and Rankin had knowledge of Plaintiff's right to purchase another Agent's interest in his books of business and the fact that Plaintiff met all requirements necessary to qualify for this purchase.
32. Defendants knowingly and intentionally interfered with business relations between Plaintiff and Don Hunter.
33. As a direct and proximate cause of these intentional acts of misconduct, the

Plaintiff has suffered damages and will continue to suffer damages in the future as a result of the aforementioned wrongful conduct of Defendants.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff demands judgment against the Defendants in an amount to be determined by the trier-of-fact, plus interest, costs, and attorney's fees, and any appropriate relief that this Court deems appropriate.

**COUNT IV
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)**

34. The Plaintiff adopts and realleges paragraphs one through twenty-nine of the complaint as fully as if set forth herein.
35. The Defendants' extreme and outrageous conduct, as described above, was done with intent to cause and with the reckless disregard of the probability of causing the Plaintiff to suffer severe emotional distress in the form of mental anguish and suffer humiliation, shame, shock, and degradation.
36. The Defendants' conduct was made more extreme and outrageous because Plaintiff was an exemplary employee of Defendant Allstate for over thirty (30) years.
37. As a direct and proximate result of Defendants' extreme and outrageous conduct, the Plaintiff has suffered humiliation, mental anguish, emotional and physical distress, and has been injured in mind, in degrees and amounts to be determined at trial.
38. The aforementioned acts of the Defendants were willful, reckless, malicious, oppressive, and done with a callous disregard of the consequences

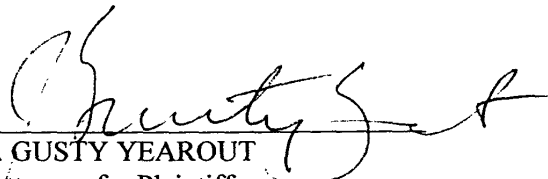
substantially certain to occur and justify an award of exemplary and punitive damages against the Defendants.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff demands compensatory and punitive damages against the Defendants in an amount to be determined by the trier-of-fact, plus interest, costs, and attorney's fees, and such other and further relief this Court deems appropriate.

**COUNT V
(CONSPIRACY)**

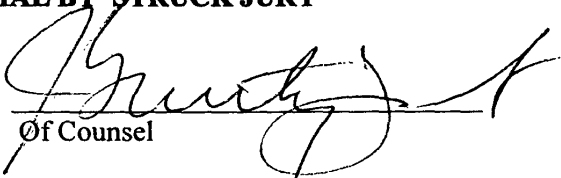
39. The Plaintiff adopts and realleges paragraphs one through thirty-four of the complaint as fully as if set forth herein.
40. Defendants Rankin and other unnamed co-conspirators conspired to interfere with Plaintiff's contract with Don Hunter for the sale of the Don Hunter Agency.
41. Defendants Rankin and other unnamed co-conspirators conspired to willfully and intentionally discriminate against Plaintiff because of his age.
42. As a direct and proximate result of the conspiracy, the Plaintiff has suffered damages and will continue to suffer damages in the future as a result of the aforementioned wrongful conduct of the Defendants.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff demands judgment against the Defendants in an amount to be determined by the trier-of-fact, plus interest, costs, and attorney's fees, and any appropriate relief that this Court deems appropriate.


J. GUSTY YEAROUT
Attorney for Plaintiff

OF COUNSEL:
YEAROUT, MYERS & TRAYLOR, P.C.
800 Shades Creek Parkway, Suite 500
Birmingham, Alabama 35209
(205) 414-8160

PLAINTIFF DEMANDS A TRIAL BY STRUCK JURY


Of Counsel

SERVE DEFENDANTS VIA CERTIFIED MAIL AT:

Mr. Brad Rankin
6006 Rosemont Road
Hoover, Alabama 35242

ALLSTATE INSURANCE COMPANY
The Corporation Company
2000 Interstate Park Dr., Suite 204
Montgomery, AL 36109

**EXHIBITS TOO LARGE FOR
SCANNING-SEE ORIGINAL
FILE**

APPENDIX



COPYRIGHT NOTICE

TextBookDiscrimination.com is not the author of these court documents. Instead, TextBookDiscrimination.com merely re-printed and reformatted them for easier use.

ORIGINAL SOURCE

<u>#</u>	<u>Item</u>	<u>Link</u>
1	Original Source	PACER.USCourts.gov

INTERACTIVE VERSION

<u>#</u>	<u>Item</u>	<u>Link</u>
1	Web	TextBookDiscrimination.com/Cases/ByDefendant/Allstate/C0061

CONTACT INFORMATION

E: TextBookDiscrimination@gmail.com

W: www.TextBookDiscrimination.com

Congratulations! You're now **booked up** on this discrimination lawsuit that was filed against Allstate Insurance Company!

