No. 20-1705

In the
Supreme Court of the United States

RENOVO SERVICES, LLC,
REMARKETING SOLUTIONS, LLC, PAR, INC.,
Petitioners,

v.

GEORGE BADEEN, MIDWEST RECOVERY
AND ADJUSTMENT, INC.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION

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July 8, 2021

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QUESTION PRESENTED

Respondents object to the questions presented by Petitioners as contrary to this Court's well established precedent.

The actual question presented is:

1. Did the Sixth Circuit Court of Appeals abuse its discretion in deeming the petition to appeal improvidently granted after receiving full briefing of all issues relating to the untimely removal by petitioners?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Midwest Recovery and Adjustments, Inc., states that it is a privately held Michigan For-Profit Corporation, and no publicly held corporations own 10% or more of its stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

STATEMENT OF THE CASE

Plaintiffs-Respondents, George Badeen ("Badeen") and Midwest Recovery and Adjustment, Inc. ("Midwest") ("Respondents," collectively), supplement and correct the Petitioners' statement of the case as follows:

Respondents commenced this civil action in 2010 in the Third Judicial Circuit Court. On September 7, 2010, Respondents filed a Second Amended Complaint ("SAC") asserting damages, including but not limited to Count VII: MCL 339.916. (SAC, D. Ct. ECF No. 1-2, PageID# 79-92.) MCL 339.916(2) states the following:

> If the court finds for the petitioner, recovery shall be in the amount of actual damages or $50.00, whichever is greater. If the court finds that the method, act, or practice was a willful violation, it may award a civil penalty of not less than 3 times the actual damages, or $150.00, whichever is greater and shall award reasonable attorney's fees and court costs incurred in connection with the action.

This triple damages provision, and the materially similar triple damages provisions under the statute aimed at non-Petitioner banks, is clearly referenced in the SAC in Respondents' requests for relief. (SAC, D. Ct. ECF No. 1-2, PageID# 91-92.)

On July 25, 2014, Badeen sent an open letter ("Open Letter") via both email and posting on the internet, addressed to recovery agencies across Michigan, explicitly stating that the estimated number of vehicles repossessed via unlicensed forwarders was

approximately 1.8 million. Open Letter, Resp't App. 1-4. In response, Miller Canfield, on behalf of Petitioner PAR, wrote a demand for retraction letter to Respondent Badeen threatening a libel suit on July 30, 2014. PAR Demand for Retraction, Resp't App. 5-13. PAR even attached the Open Letter to its letter. *Id.* This estimation of 1.8 million misdemeanor violations, in combination with Respondents' SAC and motion for class certification, clearly put Petitioners on notice all the way back in 2014 that Respondents' proposed damages would exceed five million dollars.

Additionally, on August 7, 2014, the Michigan Collection Practices Board had a meeting discussing the Open Letter, and the Open Letter was provided to all attendees. (FOIA Response, D. Ct. ECF No. 57-2, PageID# 1011-1015.) Both Leslie Morant, attorney for Renovo and Remarketing, and Hon. Cliff Taylor (Ret.), former attorney for PAR, attended the meeting and signed the sign-in sheet. (*Id.*) Petitioners have long been aware of both the Open Letter and the allegation of the 1.8 million repossession violations it contained.

On February 21, 2019, nine years after this litigation commenced, Petitioners filed a Notice of Removal from the Wayne County Circuit Court to the United States District Court for the Eastern District of Michigan based on the Class Action Fairness Act (CAFA), codified under 28 U.S.C. § 1332. The case was assigned to Judge Matthew Leitman of the Eastern District of Michigan. On March 5, 2019, Judge Leitman entered a Notice to Appear and stayed all matters pending before the court pending an in-person status conference scheduled for April 3, 2019. (Order

for Stay, D. Ct. ECF No. 19.) Judge Leitman did not specify the stay in an order, but it is reflected explicitly on the docket. (*Id.*) Immediately after the stay was entered, Respondents' counsel spoke with Judge Leitman's case manager, Holly Monda, who indicated that the stay also included a motion to remand and that Respondents were not permitted to file a motion to remand at that time pursuant to the stay. Respondents' counsel emailed Holly Monda on March 22, 2019 to clarify that a motion to remand should not be filed, and requested that an order be entered to that effect to prevent any Petitioners from arguing that Respondents' motion to remand would somehow be untimely. (Email from Monda, D. Ct. ECF No. 57-3, PageID# 1024.)

Holly Monda emailed Respondents' counsel on March 22, 2019 and expressly stated the following:

> I have spoken with Judge Leitman and the docket is clear that this case is stayed until we hold a status conference. Judge Leitman is not willing to enter anything additional on the docket. The stay means that nothing can be filed or should be filed until further order of the court. You can certainly forward my e-mail to the parties so that they are aware of what the stay means. At this time, nothing should be filed on the docket. That includes answers or responsive pleadings, motions, etc.

(*Id.*) Petitioners have been aware at all times that the stay entered by Judge Leitman on March 5, 2019 precluded Respondents from filing a motion within the first 30 days from the day the case was removed to

federal district court. Petitioners' counsel reached out to Respondents' counsel on March 7, 2019, requesting that the status conference be adjourned from April 3, 2019, and Respondents' counsel granted their request without question. The District Court subsequently adjourned the status conference (based upon Petitioners' request) from April 3, 2019 to April 18, 2019.

The parties attended the status conference on April 18, 2019, and at the hearing, Judge Leitman ordered, and all parties agreed, that Respondents would have three weeks (21 days) from April 18, 2019 to file a motion to remand (or until May 9, 2019). (Status Conference Tr., D. Ct. ECF No. 31, PageID# 472-74.) Judge Leitman further ordered that Petitioners would have two weeks after Respondents submitted their motion to remand to file their response and also allowed for two more weeks after that for the rest of Petitioners to file "their tag along or supplements" to the response. (*Id.* at PageID# 473-74.) Petitioners were present at this hearing and agreed to these terms on the record. Blaine Kimrey, counsel for PAR, speaking on behalf of all Petitioners, expressly stated on the record that Petitioners did not have any objection to the motion to remand timeline set forth by the Court. (*Id.* at PageID# 472.)

Judge Leitman subsequently discovered that he had a conflict of interest with the case that required mandatory recusal. On April 22, 2019, Judge Leitman then entered an Order recusing himself and the case was subsequently reassigned to Judge Victoria Roberts. (Order of Recusal, D. Ct. ECF No. 32, PageID# 499.)

When the case was reassigned, Judge Roberts's on May 8, 2019 also explicitly precluded Respondents from filing a motion to remand until after the parties' planned settlement conference. (Order for Stay and Mediation, D. Ct. ECF No. 33, PageID# 500.) This order states:

> Since the parties have agreed to participate in a settlement conference with Magistrate Judge Stephanie Dawkins Davis, ***no motions to remand need be filed. The Court will consider such a motion and other matters at a status/scheduling conference*** - if that becomes necessary - following their settlement conference.

(*Id.* (emphasis added)) Respondents, being mindful of the District Court's orders, followed Judge Roberts's May 8, 2019 Order and did not file a motion to remand prior to the settlement conference with the Magistrate Judge acting a facilitator.

An Order for Settlement Conference was entered on May 22, 2019 with a settlement conference date set for July 9, 2019. (Order for Settlement Conference, D. Ct. ECF No. 35, PageID# 502.) At the request of Petitioners, the settlement conference was adjourned to October 1, 2019 because not all Petitioners could attend the settlement conference in July and the parties could not get a sooner date with the magistrate. (Notice to Appear, D. Ct. ECF No. 37, PageID# 508.) The parties attended the settlement conference on October 1, 2019, but no settlement was reached. In compliance with Judge Roberts's May 8, 2019 Order, Respondents filed a motion to remand on October 23,

2019, prior to the status/scheduling conference set for November 6, 2019. On October 24, 2019, the District Court entered an Order striking the motion because it was missing required information. (Order Striking Mot., D. Ct. ECF No. 44, PageID# 689-90.) The Order expressly directed: "Respondents MUST refile a motion that complies with all requirements by Monday, October 28, 2019." (*Id.* at PageID# 690.) In compliance with the Order, Respondents timely re-filed their Motion to Remand on Monday, October 28, 2019. (Mot. to Remand, D. Ct. ECF No. 45, PageID# 691-714.)

Petitioners filed a response to Respondents' motion to remand, and Petitioners filed a reply brief. Judge Roberts granted Respondents' motion to remand the case back to state court for the reason that Petitioners' Notice of Removal was untimely under 28 U.S.C. § 1446(b)(3) because CAFA jurisdiction was unambiguously ascertainable based on the Open Letter and Respondents' SAC, so the 30-day clock for petitioners to seek removal began to run no later than July 30, 2014. (Order Remanding Case, D. Ct. ECF No. 54, PageID# 888-899.)

REASONS FOR DENYING THE PETITION

This Court should deny the petition as Petitioners have wholly failed to meet their burden under Supreme Court Rule 10. Each of the arguments made by Respondents in their Brief on Appeal in the Sixth Circuit and here provides ample legal authority for the Sixth Circuit to have exercised its discretion in determining that the petition to appeal was improvidently granted.

Petitioners unsuccessfully attempt to paint (1) a far departure from accepted and usual judicial proceedings by the Sixth Circuit requiring intervention by this Court, and (2) circuit splits regarding the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1446(c).

As explained in detail below, the Sixth Circuit acted within accepted and usual judicial proceedings, especially in light of the peculiar and unique factual and procedural history of this case.

As to the circuit splits, while there are technically opinions that provide slightly differing examples of the interpretation of portions of CAFA (*See, e.g.*, *Cutrone v. Mrtg. Elec. Registration. Sys.*, 749 F.3d 824 (7th Cir. 2013) (holding that the paper must be served by the plaintiff to the defendant); *Cf. Graiser v. Visionworks of Am., Inc.*, 819 F.3d 277 (6th Cir. 2016) (holding that the "other paper" under CAFA merely needs to come from the plaintiff), these differences in interpretation are quite minor, and may easily resolve themselves at the court of appeals level in the future. The differences in CAFA application complained of by Petitioners have not yet even developed into majority/minority rules to

present to this Court for its analysis, which, if the issues are as important as Petitioners would have this Court believe, is likely to occur in the near future.

Determining the appeal was improvidently granted was well within its discretion, and the Sixth Circuit should be upheld, as Petitioners have failed to make their case under Supreme Court Rule 10.

I. Standard of Review

This Court reiterated the position that petitions for certiorari from denial of petitions to appeal to a circuit court are reviewed for an abuse of discretion. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 90-91, 95 (2014). An abuse of discretion standard is deferential to lower court proceedings. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990). But a court "[w]ould necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Id.* When a "[d]istrict court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse…Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Anderson v. City of Bessemer City, North Carolina*, 470 U.S. 564, 573-574 (1985).

II. The Sixth Circuit did not abuse its discretion because the thirty day requirement of 28 U.S.C. § 1447(c) is merely procedural, leaving open a variety of legal arguments to find the motion to remand timely filed that were within the discretion of the Sixth Circuit.

The Sixth Circuit has not yet ruled on the procedural or jurisdictional nature of 28 U.S.C. § 1447(c) in a reported case. Permission to Appeal Order, App. to Pet. Cert. 5a. After having received full briefing on the issues and having seen the documentary evidence supplied to the District Court, the Court of Appeals decided that the permission to appeal was improvidently granted. There was no erroneous view of the law either adopted or expressed, and the Court of Appeals properly declined to review the issue based upon the unique facts of this case.

In fact, as Respondents argued below, there is plenty of published case law that the plain language of 28 U.S.C. § 1447(c) makes it clear that the thirty day requirement is procedural in nature:

> "A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."

28 U.S.C. § 1447(c)[1]. A plain reading of the statute shows that for remand to occur for any reason other than subject matter jurisdiction, a motion to remand must be filed. *Page v. City of Southfield*, 45 F.3d 128, 133 (6th Cir. 1995). This is clearly a procedural directive by Congress.

It has been held that a motion to remand, under the first sentence of 1447(c), "[c]onsigns procedural formalities to the care of the parties…" *Kelton Arms Condo Owners Ass'n, Inc. v. Homestead Ins. Co.,* 346 F.3d 1190, 1192 (9th Cir. 2003); citing *In re Allstate Ins. Co.*, 8 F.3d 219, 223 (5th Cir. 1993); *Matter of Continental Cas. Co.*, 29 F.3d 292, 295 (7th Cir. 1994) (holding that 1447(c) remand is a "procedural" issue that must be quickly addressed); *See also Phoenix Glonal Ventures LLC v. Phoenix Hotel Associates, Ltd.*, 422 F.3d 72, 75 (2d Cir. 2005) (holding that "we have never held [1447(c)] to be jurisdictional…").

Additionally, 28 U.S.C. § 1446(b) controls the thirty day deadline for removal that Petitioners failed to meet. The Sixth Circuit had previously ruled that the requirements of 1446(b) are procedural in nature. *Page v. City of Southfield*, 45 F.3d 128, 131 (6th Cir. 1995); *Seaton v. Jabe*, 992 F.2d 79, 81 (6th Cir. 1993). It therefore follows that the Sixth Circuit time period for filing a motion to remand under 1447(c) must also be procedural, as the motion to remand is based on the failure of Petitioners to meet their procedural burdens under 1446(b).

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[1] Subject matter jurisdiction was not raised in the lower court.

The Sixth Circuit did not adopt any legal ruling that was an erroneous view of the law. The Sixth Circuit exercised is discretion not to take the appeal on the peculiar and unique facts of this particular case. There was no abuse of discretion in the court below, and the order denying the appeal as improvidently granted should stand.

A. The Sixth Circuit did not abuse its discretion because the District Court had authority to stay procedural deadlines.

The Sixth Circuit did not adopt any erroneous view of the law when it decided the appeal was improvidently granted, and therefore did not abuse its discretion. The record makes abundantly clear that the District Court ordered several stays of proceedings preventing Respondents from filing their motion for remand after the case was removed. These stays are authorized under several legal principles.

1. The District Court had authority to stay proceedings under common law principals.

The Sixth Circuit and this Court have previously held that a District Court has broad authority to control its docket. The Sixth Court, citing to this Court, has held that "[t]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of causes in its docket with economy or time and effort for itself, for counsel, and for litigations…entry of such an order ordinarily rests with the sound discretion of the District Court." *Ohio*

Environmental Council v. U.S. Dist. Court, Southern Dist of Ohio, 565 F.3d 393, 396 (6th Cir. 1977) (internal citations omitted); citing *Landis v. North American Co.,* 299 U.S. 248, 254-255 (1936).

Here, in an effort to better grasp the complexities of this case, Judge Leitman ordered a blanket stay of all proceedings, and later clarified through his clerk that the stay precluded filing of any motion for remand. As Judge Leitman explained at the hearing, as a result of the status report he directed the parties to file prior to the April 18, 2019 status conference, he then "[h]ad a tiny sense of what's going…" (Status Conference Tr., D. Ct. ECF No. 31, PageID# 460.) At that time, Judge Leitman acknowledged that one point of the status report was to inform the court ***whether or not Respondents intended to file a motion to remand.*** (*Id.*)

Based upon the suggestion of PAR that the case be sent to the Magistrate for a settlement conference, and the subsequent agreement of all parties, Judge Roberts then continued Judge Leitman's stay of proceedings through the settlement conference.

Here, both District Court judges presiding exercised their inherent powers of docket control and ordered a stay of proceedings. *Ohio Environmental Council*, 565 F.3d at 396. This was done in order to facilitate not only the needs of the Court in getting apprised on the history and issues of the (then) nine-year-old proposed class action, but also for judicial economy in going along with PAR's suggestion for a settlement conference. The Petitioners even agreed to this exercise of judicial economy by stating on the record

they would agree to continuance of remand proceedings during the pendency of the settlement conference for purposes of settlement leverage. (Status Conference Tr., D. Ct. ECF No. 31, PageID # 480, ll. 10-17; PageID # 483, ll. 15-21.)

It is clear that the District Court exercised its inherent authority to control its own docket for the economy of both the court and the litigants. It is also clear that the Petitioners agreed to the District Court's exercise of this discretion. Therefore, Respondents' motion was timely based upon the District Court stay, and the Sixth Circuit did not abuse its discretion in declining to fully hear Petitioner's appeal.

2. The District Court had authority to stay proceedings under Fed. R. Civ. P. 6(b).

District Courts have authority to stay proceedings under the Federal Rules of Civil Procedure. As Respondents argued in both the District Court and in their response in the Sixth Circuit, Respondents withheld filing their motion to remand based upon duly issued orders from the District Court. When an act must occur within a specific time, a District Court may extend the time "[w]ith or without motion or notice before the original time or its extension expires…" Fed. R. Civ. P. 6(b)(1).

Federal Rule of Civil Procedure Rule 6(b) rule has been applied by District Courts across the country to the thirty day requirement of 1447(c). *Walters v. Kentucky-American Water Co.*, 2010 WL 1563497 (E.D. Ky. April 19, 2010) (holding that the District Court has

authority under Fed. R. Civ. P. 6(b)(1)(a) to extend 1447(c) remand motions); *Tyson v. Miller*, 2012 WL 1994855 (S.D. Ala. May 8, 2012) (holding that a District Court has authority under Fed. R. Civ. P. 6 to extend the time to file a motion to remand under Fed. R. Civ. P. 6(b)(1)(a)); *Ramos v. Quien*, 631 F. Supp. 2d 601 (E.D. Pa. 2008) (holding that Fed. R. Civ. P. 6 grants the court authority to extend the time of 1447(c) when there is excusable neglect under Fed. R. Civ. P. 6(b)(1)(b)); *Poulter v. Bank of America NA,* 2014 WL 12770233 (D. S.C. July 30, 2014) (holding that Fed. R. Civ. P. 6 grants the court authority to extend the time of 1447(c) under Fed. R. Civ. P. 6(b)(1)(b)); *Deane v. Michigan Processed Foods*, 5 F.R.D. 508 (W.D. Mich. 1946) (applying then Federal Rules to extend time to file motions under predecessor 1447(c)); *Papadopoulous v. Mylonas,* 2011 WL 4837276 (E.D. Pa. October 11, 2011) (holding that Fed. R. Civ. P. 6 grants the court authority to extend the time of 1447(c) under Fed. R. Civ. P. 6(b)(1)(b)); *Mead v. IDS Property Cas. Ins. Co.*, 2913 WL 12157838 (M.D. Fla. November 26, 2013) (holding that Fed. R. Civ. P. 6 grants the court authority to extend the time of 1447(c) under Fed. R. Civ. P. 6(b)(1)(b)).

Here, the District Court applied a stay of proceedings just days after removal. Judge Leitman made it very clear that this stay applied to motions for remand. Judge Roberts extended that stay based upon the agreement for a settlement conference and stay of proceedings made by Petitioners. Petitioners agreed to a briefing schedule for the motion to remand (that would have already been late based upon the logic asserted in the improvidently granted appeal and

here), as well as the stay of proceedings in order to facilitate a settlement conference (that Petitioners suggested be held).

Under Fed. R. Civ. P. 6, it is clear that the District Court has authority to enlarge deadlines. As asserted in the District Court below and in their response to Petitioners' petition for leave to appeal, at all times Respondents followed their duty and obeyed the orders of the District Court and withheld filing their motion to remand. The orders issued by the District Court served to enlarge the time for Respondents to file their motion to remand, and the motion to remand was therefore timely filed. The Sixth Circuit did not abuse its discretion in declining to hear Petitioner's appeal.

B. Equitable tolling also applies to make the motion to remand timely.

The doctrine of equitable tolling applies to extend the time that Respondents could file the motion, making the decision not to hear the appeal within the Sixth Circuit's discretion.

Equitable tolling should be sparingly applied. *Graham-Humphries v. Memphis Brooks Museum of Art, Inc.*, 209 F.3d 552, 560 (6th Cir. 2000). "Garden variety neglect cannot be excused by equitable tolling." *Id.* at 561. But in the event of compelling equitable considerations, a court may extend legal deadlines. *Id.*

There are five factors identified by the Sixth Circuit in determining whether equitable tolling should be applied: (1) lack of notice of a filing requirement, (2) lack of constructive knowledge of the filing requirement; (3) diligence in pursuing one's rights;

(4) absence of prejudice to other parties; (5) the reasonableness of remaining ignorant of legal requirements. *Id.* However, these factors have not been determined to be comprehensive, nor whether each factor should be considered for each case. *Id.* Rather, "[t]he propriety of equitable tolling must necessarily be determined on a case-by-case basis." *Id.*(internal citation and quotation omitted).

Here, only factors 3 and 4 apply to the facts of this case, and the other factors are irrelevant to the equitable tolling analysis. *See Id.* Respondents knew all along that they were required to file a motion to remand within thirty days of the notice of removal. However, they were ***ordered by the District Court*** not to do so. Regardless, during that period they diligently made inquiries of Judge Leitman's chambers, asserted their intent to file the motion and explained the facts underlying their arguments for remand in the status report and at the status conference with Judge Leitman, and filed the motion when allowed by Judge Roberts. Respondents diligently pursued their rights but could only go so far without violating duly issued court orders. Petitioners have not even argued that they were prejudiced by the District Court granting the motion to remand, as they have only asserted procedural grounds in their appeal and here. Further, Petitioners agreed to the stay of proceedings, and they further agreed to a briefing schedule for Respondents' motion to remand on the record. (Status Conference Tr., D. Ct. ECF No. 31, PageID# 487.)

There is no prejudice to Petitioners, Respondents had no ability to file the motion to remand without

running afoul of court orders, and the Petitioners consented to the District Court's orders on the record. There is no "garden variety neglect" by Respondents here, only adherence to orders issued by the District Court. Clearly, the factors of *Graham-Humphries* weigh in favor of granting equitable tolling of Respondents' 1447(c) deadline.

Federal Courts have held equitable tolling applies to the procedural deadlines contained in 1446 and 1447. *Roe v. O'Donohue*, 38 F.3d 298, 302 (7th Cir. 1994) (holding that "the court may assume the 30-day period [of 1447(c)] is subject to equitable tolling and estoppel…") (*rev'd on other grounds*); *Tedford v. Warner-Lambert Co.,* 327 F.3d 423, 428 (5th Cir. 2003) (applying equitable principals to removal deadlines) (abrogated by statute); *Bank of New York Mellon v. Glavin*, 2012 WL 13069923 (W.D. Wis. Mar. 15, 2012) (applying equitable tolling principals to 1447(c) remand motions); *Mack v. Alston*, 2009 WL 2836421 (E.D. Mo. Aug 27, 2009) (equitably tolling the 1447(c) remand motion deadline).

The Sixth Circuit's test for the application of equitable tolling weighs in favor of equitably tolling Respondents' deadline under 1447(c). Additionally, other courts, including the Seventh Circuit Court, have held that equitable principles apply to the deadline of 1447(c). Because Respondents had no choice but to follow the orders of the District Court preventing their filing, and Petitioners consented to the District Court's actions, including the timing of the filing of the motion to remand, equity demands that the Respondents be found to have timely filed their motion to remand.

The Sixth Circuit was within its sound discretion to decline to hear the appeal, and the order denying the appeal as improvidently granted should stand.

C. Petitioners are estopped from arguing that the motion to remand is untimely.

The Sixth Circuit has held that "[e]quitable estoppel is designed to prevent undue hardship to one who has relied to his detriment on an earlier inconsistent position of his opponent." *Reynolds v. CIR*, 861 F.2d 469, 474 (6th Cir. 1988). As explained in more detail by this Court, "[w]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." *Zedner v. U.S.*, 547 U.S. 289, 504 (2006) (internal citations and quotations omitted). The doctrine "[i]s equitable and thus cannot be reduced to a precise formula or test…," but the Supreme Court identified the factors in the application of the doctrine: (1) an inconsistent later position, (2) whether a court was persuaded by the earlier position, (3) whether the party asserting an inconsistent position would derive an unfair advantage if not estopped. *Id.*

Petitioners' argument clearly meets the standards set out both by this Court. At the status conference, it was Petitioners, speaking collectively through the attorney for PAR, that suggested the settlement conference. (Status Conference Tr., D. Ct. ECF No. 31, PageID# 483.) "But we would stipulate to continue so that the Court doesn't have to focus on [remand], so the

other side doesn't have to focus on it, but it's still hanging out there as a leverage point with respect to settlement and go directly to settlement while the case is stayed." (Status Conference Tr., D. Ct. ECF No. 31, PageID# 483, ll. 15-22.) When Judge Leitman questioned whether or not the settlement conference would even be worthwhile, ***it was the Petitioners who convinced the Judge*** that the opportunity for the settlement conference should move forward if all parties were to get authority to agree. (*Id.* at PageID# 484-491.) Petitioners asserted that a settlement conference with a magistrate judge would be worth pursuing, and Petitioners then persuaded the Judge to pursue the opportunity for a settlement conference (all while agreeing to a continuance of the remand briefing schedule and the stay of proceedings). (*Id.* at PageID # 460.)

Now, Petitioners adopt the inconsistent position that the motion to remand was untimely. This position is completely contrary to the arguments made at the status conference. Respondents went along with the settlement conference in good faith, and Petitioners are now attempting to weaponize their own lobbying of the District Court regarding a magistrate's involvement. Petitioners adopt this new contrary position for the sake of their own benefit and to the detriment of Respondents.

Clearly, Petitioners' prior position in favor of a settlement conference while agreeing to a stay of proceedings and remand briefing schedules are inconsistent with their current position that Respondents filed their motion untimely and consented

to the jurisdiction of Federal Courts. Petitioners have changed their position in yet another of many examples of litigation gamesmanship to gain an advantage over Respondents. Equity demands that Petitioners be estopped from making these arguments.

D. Public Policy considerations.

As a threshold matter, the public policy behind the thirty day limit of 1447(c) is to avoid forum shopping and late stage motions to remand after significant litigation in the Federal Courts. The Second Circuit, in evaluating both the plain language of 1447(c) and its legislative history, has held that "[t]he purpose of the amendment then, was to avoid late-game forum shopping by plaintiffs by imposing a 30-day limit to ensure that improperly removed matters…would be remanded early in the proceedings or not at all." *Pierpoint v. Barnes,* 94 F.3d 813, 818 (2d Cir. 1996).

In our case, a stay of proceedings was ordered by Judge Leitman and then continued by Judge Roberts. These stays ensured that the public policy behind 1447(c) were met: that there was no late game forum shopping by Respondents in this matter and no significant proceedings in the District Court.[2] Petitioners' continued games are the only forum shopping that have occurred, and because the entire matter was stayed, there were no substantive

[2] In fact, Petitioners are the ones guilty of forum shopping. Petitioners first attempted to move this case from state court into an administrative proceeding under Michigan's Primary Jurisdiction doctrine in January of 2015. Now, Petitioners have removed to Federal Court nine years after the case was filed and after four attempts to have the case dismissed in state court.

proceedings occurring in the District Court. At all times, Respondents made clear to both the District Court and Petitioners that they intended to file a motion to remand. (See Status Conference Tr., D. Ct. ECF No. 31, PageID# 460.) Thus, the remand was issued "early in the proceedings," especially relative to the overall age of this case. *Pierpoint*, 94 F.3d at 818.

Any public policy concerns in the application of 1447(c) have been met by the stays imposed by the trial court.

E. Respondents' motion to remand was timely based on the foregoing.

Petitioners filed their Notice of Removal on February 21, 2019. The case was then stayed on March 5, 2019, and Judge Leitman of the Eastern District of Michigan would not permit any filings by the parties pending an in-person status conference. (Order for Stay, D. Ct. ECF No. 19.) Accordingly, Respondents could not file a motion to remand. To clarify whether a motion to remand was permitted, Respondents' counsel reached out to Judge Leitman's case manager, Holly Monda, requesting that Judge Leitman put the stay in the form of an Order to prevent any misunderstandings about the stay. Holly Monda informed Respondents that nothing should be filed on the docket, including a motion to remand. (Email from Monda, D. Ct. ECF No. 57-3, PageID# 1024.)

Respondents could have been held in contempt for filing a motion to remand in violation of Judge Leitman's stay order. Respondents nonetheless preserved the issue. Moreover, Judge Leitman

Ordered, and ***all parties agreed***, at the April 18, 2019 status conference that Respondents would have three weeks to file a motion to remand. (Status Conference Tr., D. Ct. ECF No. 31, PageID# 472-74.) This time period is well after the thirty day clock would have run out in the absence of the stay order. Blaine Kimrey, counsel for PAR, speaking on behalf of all Petitioners, expressly agreed to the motion to remand timeline set forth by the District Court. (*Id.* at PageID# 472.) Petitioners' explicit concession as to the motion to remand timeline should constitute a waiver and act as an automatic bar to the arguments brought by Petitioners regarding the timeliness of Respondents' motion.[3]

The unsuccessful settlement conference took place on October 1, 2019. In compliance with Judge Roberts's May 8, 2019 Order, Respondents then filed their motion to remand on October 23, 2019, prior to the status/scheduling conference set for November 6, 2019. On October 24, 2019, the District Court entered an Order striking the motion on technical grounds. (Order Striking Mot., D. Ct. ECF No. 44, PageID# 689-

[3] Petitioners' assert that the 12 days (the time from when the Notice of Removal was filed on February 21, 2019 to when the stay was entered on March 5, 2019) count as part of the 30-day clock for removal, but these days are irrelevant because Judge Leitman ordered (***and all parties agreed on the record***) at the April 18, 2019 status conference that Respondents would have three weeks from that date to file a motion to remand, rendering any days Respondents would have had prior to that status conference moot, and Petitioners should be estopped from arguing that the motion to remand could not be extended by Court Order by their judicial admission. (Status Conference Tr., D. Ct. ECF No. 31, PageID# 472-74.)

90.) The Order expressly directed that plaintiffs refile their motion to remand by Monday, October 28, 2019. (*Id.* at PageID# 690.) In compliance with the Order, Plaintiffs timely re-filed their motion on Monday, October 28, 2019. (Mot. to Remand, D. Ct. ECF No. 45, PageID# 691-714.)

The Sixth Circuit was well within its discretion to consider all of the above laid out unique and peculiar facts and circumstances, and arguments made by the parties, in determining that the permission to appeal was improvidently granted. There is no adoption of an erroneous view of law because there were various views of laws argued in the briefs on appeal. Simply put, the Sixth Circuit exercised its discretion not to make a ruling based on the overly convoluted facts before it.

III. The Sixth Circuit did not abuse its discretion because Petitioners were unambiguously able to ascertain Respondents' alleged damages and missed their deadline to remove by 6 years.

An abuse of discretion occurs when a ruling is based upon an erroneous view of the law or when there is a clearly erroneous view of the evidence. *Cooter & Gell*, 496 U.S. at 405. Here, there is no abuse of discretion in the application of the convoluted facts of this case applied to the law of the Sixth Circuit, and the Sixth Circuit was within its discretion not to take the appeal.

Petitioners argue that the Open Letter was not received by them "from Plaintiffs," and thus fails the *Graiser* bright-line test to begin the thirty day clock for removal under the CAFA, but this argument is

meritless. But the District Court held in its Order for Remand that, under CAFA, the thirty day window to remove begins when a defendant receives, ***"[t]hrough service or otherwise***, [a] copy of amended pleading, motion, order ***or other paper*** from which it may first be ascertained that the case is one which is or has become removable." (Order Granting Mot. to Remand, D. Ct. ECF No. 54, PageID# 892; citing 28 U.S.C. § 1446(C)(3)); *Graiser*, 819 F.3d at 282 (emphasis added). The Sixth Circuit clarified in *Graiser* that the thirty day clock begins to run when the defendant receives a document from the Plaintiff and provides that the purpose of the bright-line rule is so that "[a] defendant is not required to search its own business records or 'perform an independent investigation into a Plaintiff's indeterminate allegations.'" (Order Granting Mot. to Remand, D. Ct. ECF No. 54, PageID# 893); citing *Graiser*, 819 F.3d at 285. Further, as the District Court pointed out in its order, "[a] defendant cannot prevent the beginning of the thirty day window by refusing to 'multiply figures clearly stated in a complaint.'" (*Id.*) Petitioners' attempts to ignore both the bright-line rule and its underlying policy fail.

It has been established beyond any doubt that Petitioner PAR received the Open Letter. Open Letter, Resp't App. 1-4. Petitioners Renovo and Remarketing also received the so-called "retraction" letter the very day it was emailed to the exact same list of recipients that resulted in PAR receiving the letter. Leslie Morant Declaration, Resp't App. 14-19. The Open Letter and "retraction" letter were drafted by Badeen and received by Petitioners "through service or otherwise" to put them on notice of Respondents'

proposed damages. *Graiser*, 819 F.3d at 282. The bright-line rule in *Graiser* was satisfied without question. Petitioners expected the Sixth Circuit to believe that while PAR definitively received the Open Letter, and Renovo and Remarketing definitively received the retraction letter, somehow it can be argued that the Open Letter, drafted by Badeen, did not end up in their possession or that they are not otherwise charged with knowledge of the contents. This assertion is particularly egregious given the blatant forum shopping and litigation gamesmanship that has been prevalent through this litigation.

The Sixth Circuit was well within its authority to decline to hear the appeal on these facts and did not abuse its discretion in doing so.

A. Petitioners have been on notice of Respondents' alleged damages.

Factual findings are upheld on appeal unless they are clearly erroneous. *Anderson*, 470 U.S. at 573-574. The Sixth Circuit properly declined to upset the factual findings of the District Court as one of several plausible views of the evidence, and therefore did not abuse its discretion. *Id.*

Petitioners, in attempts to obscure their actual knowledge of Respondents' claims, want to claim that the Open Letter fails to meet the standards and rationale set out by *Graiser*. To bolster this argument, they (only later) make the claim that this Open Letter was not created or served by Respondents in the context of this litigation and that it is akin to a social media post that merely references a pending litigation.

Petitioners have already acknowledged that the Open Letter was ***emailed as well as posted, and then actually obtained by them.*** Clearly, their argument is factually incorrect on its face. Petitioners consistently attempt to dance around their unequivocal, ***actual notice and receipt*** of the Open Letter. Badeen posted ***and emailed*** the Open Letter to a privately generated list of licensed repossessors. The District Court correctly noted that PAR sent a cease and desist letter to Badeen in response to the Open Letter ***five days later*** on July 30, 2014 and attached a copy of the Open Letter for reference. (Order Granting Mot. to Remand, D. Ct. ECF No. 54, PageID# 894); see also PAR Demand for Retraction, Resp't App. 5-13. Within days of it being sent, PAR had the Open Letter. Shortly thereafter, ***all*** Petitioners had the "retraction" letter in their possession. PAR, who it was directly sent to, and Renovo and Remarketing, who ***received it the day it was sent.*** Leslie Morant Declaration, Resp't App. 14-19.

Nothing that occurred in this case would have required any Petitioner to conduct an independent investigation, or examination of its own records, to determine that Respondents are seeking over five million in damages. The Open Letter from Badeen landed directly into Petitioners' hands. CAFA mandates that all it takes to put Petitioners on notice is a paper, by service ***or otherwise***. 28 U.S.C. § 1446(C)(3) (emphasis added). *Graiser* merely holds (despite Petitioners' tortuous twisting of the holding) is that the paper must come from the plaintiff so that Petitioner is not burdened with any independent examination. (Order Remanding Case, D. Ct. ECF No.

54, PageID# 893); citing *Graiser*, 819 F.3d at 285. "Federal jurisdiction should be exercised only when it is clearly established." *Id.* The District Court correctly found that the Open Letter was received by the Petitioners and met the requisite standards to merit remand.

There is no abuse of discretion by the Sixth Circuit in upholding these findings of fact.

IV. The Sixth Circuit did not abuse its discretion because the Open Letter was clear and had sufficient detail for Petitioners to determine Respondents' damages.

Petitioners also contend that the Sixth Circuit abused in discretion by failing to take their appeal, despite the fact that the Open Letter constitutes unambiguous evidence against removability. In making this assertion, Petitioners fail to mention that the District Court did ***not*** base its decision on the Open Letter standing alone: the district court opinion expressly states that the thirty day clock "began to run when PAR received Plaintiffs' July 25, 2014 open letter; by then PAR could have unambiguously ascertained CAFA jurisdiction by reading the July 25, 2014 open letter ***in conjunction with the second amended complaint***." (Order Remanding Case, D. Ct. ECF No. 54, at PageID# 894. (emphasis added))

Petitioners make three main arguments about the Open Letter in an attempt to twist the conclusions of the District Court and create an issue for this Court. First, that it makes no reference to the Forwarder

Petitioners in this case. Second, that "there is no evidence that the 1.8 million alleged violations occurred during the class period of April 5, 2004 to April 4, 2010." And third, that the Open Letter was retracted by Plaintiffs before the removal clock expired.

The District Court adopted a clearly plausible view of the evidence before it, and that view was properly upheld by the Sixth Circuit. There was no abuse of discretion, and this petition should be denied.

A. The Open Letter was directed at Petitioners subject to this lawsuit.

Petitioners' argument that this Open Letter would somehow be directed at Forwarder's not subject to this lawsuit fails on its face. Petitioners' argument somehow draws the conclusion that Respondents would, for some reason, write an Open Letter to and about Forwarders they felt were acting in violation of the law and for some reason not have included them with the numerous defendants in this case. It makes zero sense that Badeen would continue to track all repossessions done by Forwarders that violated the statute, complain about repossessions, then inexplicably fail to include them in this lawsuit. Plaintiff filed this action against all unlicensed Forwarders in the state of Michigan specifically known to be operating in Michigan and that the 1.8 million misdemeanor violations referenced in the letter were the repossessions they performed. The Open Letter explicitly says the 1.8 million misdemeanors violations refer to the "estimated number of vehicles repossessed via ***these*** unlicensed repossessors." Open Letter, Resp't App. 1-4 (emphasis added).

It was a completely plausible and permissible view of this evidence for the District Court to conclude that Respondents would sue every potential defendant, and it was proper for the Sixth Circuit to decline to overturn this conclusion. *Anderson*, 470 U.S. at 574. This very issue was discussed on the record in front of Judge Leitman prior to his recusal. (See Status Conference Tr., D. Ct. ECF No. 31.) Respondents' Counsel explained that Respondents are pursuing ***every possible*** defendant on behalf of the class that negatively impacted the class. (*Id.* at PageID# 465-468.) Logically, it makes no sense that Respondents would know about, address in an Open Letter, and fail to join a potential defendant to the lawsuit. The District Court's decision to remand this case to state court is fully supported by a simple and plausible review of the record.

B. Respondents' damages were clear and defendants merely refused to do simple math in 2014.

Petitioners' argument that the 1.8 million repossessions somehow makes the damages Respondents' seek unclear is ludicrous. There has been no court-defined class period as of yet. The class period will ultimately be for the period within the statute of limitations that illegal repossessions took place. Again, a simple reading of the record, including the twice-filed in state court motion for class certification[4], shows

[4] No ruling has ever been made. The second filing, made after appeal to the Michigan Supreme Court, was entered so that the motion would be in the electronic filing system not used at the time of the original filing.

Plaintiffs have not put a time limit on their class. However, assuming *arguendo* that the class period should be so defined, this does not help Petitioners. The answer is still unambiguously contained in simple math. Even a 40% reduction in damages (2004 to 2014, minus 4 years) does not change the fact that Petitioners cannot refuse to multiply figures.[5] *Graiser*, 819 F.3d at 285. As the District Court pointed out, the "$1" in actual damages example is "[a]n amount below what any reasonably person could believe that Plaintiffs were seeking for actual damages…" (Order Remanding Case, D. Ct. ECF No. 54, PageID# 898-899.) Given the documents and facts before it, the District Court's conclusions were one of several supported by the evidence, and the Sixth Circuit properly refused to set them aside.

C. The Open Letter was not retracted.

The District Court correctly found that the "retraction" letter shows that Badeen stuck by his original allegations. Petitioners make much ado about the "retraction" letter. Once again, they are twisting the facts and the District Court's holding. Petitioners, after receiving the Open Letter, sent a cease and desist letter to Badeen and threatened a libel suit, and demanded that he retract the Open Letter.[6] PAR

---

[5] At a 40% reduction, even if Respondents' only allege the minimum of $50.00 per violation under MCL 339.916(2), Petitioners had ample notice that Respondents' damages exceed 5 million dollars. 1.8 million violations x 60% = 1,080,000 x $50.00 per violation = $54,000,000.00.

[6] PAR's cease and desist letter was dated only 5 days after the Open Letter.

Demand for Retraction, Resp't App. 5-13. Subsequently, Badeen drafted and submitted another Open Letter to meet PAR's demands, which was circulated and posted to the same Petitioners who received the Open Letter. The District Court correctly pointed out that "Plaintiffs never retracted the letter or their allegation that the Forwarder Petitioners were responsible for 1.8 million repossessions/violations." (Order Remanding Case, D. Ct. ECF No. 54, PageID# 895.) In fact, other than the subject line, the "retraction" letter does not use the word "retraction" anywhere. Badeen merely clarified his lay misstatements about the Michigan Supreme Court holding, without retracting any part of his actual letter. Leslie Morant Declaration, Resp't App. 14-19. A careful reading of the "retraction" letter, issued at the insistence of the Petitioners, clearly demonstrates that once again the District Court's holding was correct and factually based. Following the District Court's holding is well within the discretion of the Sixth Circuit, and this petition should be denied.

CONCLUSION

For the reasons stated above, the order of the Sixth Circuit Court of Appeals determining that permission to appeal was improvidently granted was within the sound discretion of the Sixth Circuit, and the petition should be denied. This case should be remanded back to the 3rd Judicial Circuit Court of Michigan for Wayne County.

Respectfully submitted,

Joseph M. Xuereb
Counsel of Record
XUEREB LAW GROUP PC
7752 N. Canton Center Rd.
Suite 110
Canton, Michigan 48187
(734) 455-2000
jxuereb@xuereblawgroup.com

Counsel for Respondents

Dated: July 8, 2021

APPENDIX

APPENDIX

TABLE OF CONTENTS

APPENDIX A

Midwest Recovery & Adjustment, Inc.
[Seal]
14666 Telegraph Road
Redford, Michigan 48239

George Badeen
President
(313) 817-2100
gbadeen@midwestautoauction.com

[Filed October 28, 2019]

July 25, 2014

Open Letter To All Michigan Licensed Recovery Agencies

Dear Fellow Michigan Recovery Agent,

Many years ago I began to wonder, how it was that a Forwarder could operate In our State without a Collection License, and in doing so, avoid the encumbrances of insurance, bonding, taxes, governmental oversight, and act as an unregulated middleman who stood between me, the regulated repossessor, and the regulated Bank? How was it that they could interfere and nullify existing contracts with my clients, then demand the same work for less than half, and retaliate by destroying my business if I refused their "offer"? Over the next several years I brought this question before various levels of our Courts until eventually I reached the Supreme Court of

Michigan. Their answer to my question was in total unison; Forwarders are violating Michigan Law by not possessing a State Collection License. Additionally, they also ruled that anyone who has hired an unlicensed Forwarder to repossess a vehicle is also in violation of Michigan Law. You would think that their ruling would have stopped these Forwarders but you would be wrong. Many still haven't ceased and are demonstrating their arrogance for our Laws by continuing with business as usual.

Despite the decision of our Supreme Court the Attorney General, the top enforcer of the laws of our State, has been slow to do anything; and why? After all this is a slam-dunk! The entire Supreme Court has already ruled the Fowarders to be in violation of our Laws and I understand that there are now some Federal agencies that have begun investigations based on their ruling. Why is our own Attorney General still dragging his feet? Could it be that he's just slow to the draw or is it something else. As a result of his inaction, the Forwarders have been allowed time to mitigate their impending damages that they know are coming and to apply for Collection Licenses. I have been informed that after receiving these "shinny" new licenses, they will not only become "cleansed of their sins" for operating without one to begin with, but will now be "licensed" to continue with the theft of our businesses and the gouging of Michigan's Consumers. I suppose that If the AG were to apply this skewed logic of the law equally, than I guess he thinks that it's "OK" to perform brain surgery, or drive a car without a license. If you get caught, don't worry, he'll give the time you need to get one and all will be forgiven.

Obviously, he fails to understand that a license is more than piece of paper. It signifies, that you have met certain legal standards, such as a background check, passing an exam, providing proof of insurance, and certifying that you are a law abiding citizen. Despite the approximate 1.8 million misdemeanor violations, (the estimated number of vehicles repossessed via these unlicensed Forwarders), it is now apparent that this delay has been intentional to allow time for the construction of a special fast track to legal acceptability for these Forwarders. In short, the standard roadblocks of legality that applied to you and me, are to be removed to accommodate them.

This travesty at our expense cannot continue. Our task is obvious, we must work together and stop these Forwarders from obtaining a license to operate in our State. I ask for your support and encourage you to stand with me in this fight and **attend the next meeting of the Michigan Collection Practices Board on August 7, 2014 at 10:00 A.M., in Conference Room #1, located at 2501 Woodlake Circle, in Okemos**. Please mark your calendar and make plans to attend so that we can demonstrate to our State's Government that we stand united.

Lastly, in light of the recent Ruling of our Supreme Court, I think it prudent and I would recommend to you, that you ask any Forwarder you are doing business with to provide you proof of their Michigan State Collection License. If they cannot do this, you may consider ceasing all work for them and going directly to the Banking entity who placed the order and

inform them that you can no longer accept orders through their Forwarder.

In closing, please allow me to thank you for your support and unity in this battle to take back control of our industry.

Sincerely,

/s/ George Badeen
George Badeen

APPENDIX B

MILLER CANFIELD

Miller, Canfield, Paddock and Stone, P.L.C.
150 West Jefferson, Suite 2500
Detroit, Michigan 48226
TEL (313) 963-6420
FAX (313) 496-7500
www.millercanfield.com

[Filed October 28, 2019]

Founded in 1852
by Sidney Davy Miller

MICHIGAN: Ann Arbor
Detroit • Grand Rapids
Kalamazoo • Lansing • Troy
FLORIDA: Tampa
ILLINOIS: Chicago
NEW YORK: New York
OHIO: Cincinnati
CANADA: Toronto • Windsor
CHINA: Shanghai
MEXICO: Monterrey
POLAND: Gdynia
Warsaw • Wroclaw

LARRY J. SAYLOR
TEL (313) 496-7986
FAX (313) 496-8454
E-MAIL saylor@millercanfield.com

July 30, 2014

George Badeen
Midwest Recovery & Adjustment, Inc.
c/o Joseph M. Xuereb, Esq.

Xuereb Snow, PC
7752 Canton Center Road, Ste. 110
Canton, MI 48187

Re: Defamation of PAR, Inc. d/b/a PAR North America

Dear Mr. Badeen:

This firm represents PAR, Inc. d/b/a PAR North America ("PAR"). I write to address your "Open Letter to All Michigan Licensed Recovery Agencies" dated July 25, 2014, which is attached, along with your transmittal letter. Your statements regarding the effect of the Michigan Supreme Court opinion dated June 14, 2014 in *Badeen v. PAR, Inc.* are false and defamatory. Specifically, without limitation, the following statements are factually wrong and per se actionable:

- The Michigan Supreme Court has ruled that PAR is "violating Michigan Law by not possessing a State Collection License."
- The Michigan Supreme Court has also ruled that "anyone who has hired" PAR "to repossess a vehicle is also in violation of the Michigan Law."
- PAR is demonstrating "arrogance for our Laws by continuing with business as usual."
- The Michigan Supreme Court "has already ruled" that PAR is "in violation of our Laws."

As you well know, the Michigan Supreme Court remanded the matter to the Wayne County Circuit Court for further proceedings, including consideration

of all remaining defenses and exceptions to the application of the licensing requirement in Article 9 of the Michigan Occupational Code, MCL 339.901 *et seq*. No court has held either that PAR violated Michigan law by failing to be licensed as a collection agency, or that anyone violated Michigan law by retaining PAR as a repossession forwarder.

On behalf of PAR, we demand that you immediately cease and desist from further distribution of the "Open Letter," issue a retraction pursuant to MCL 600.2911(2)(b) to any and all recipients of that letter, and cease and desist from posting or communicating any defamatory statements regarding PAR. Your counsel should immediately contact us to discuss the appropriate form of the retraction.

Please confirm your compliance with this demand by 5:00 p.m. Friday, August 15, 2014 by providing a copy of the agreed retraction, a list of the names and addresses of all recipients of the "Open Letter," the names and addresses of all recipients of the retraction, and the date and manner that each was transmitted. Absent such confirmation, we will take such measures as may be appropriate to protect PAR's interests.

Very truly yours,

Miller, Canfield, Paddock and Stone, P.L.C.

By: /s/ Larry J. Saylor
Larry J. Saylor

LJS/slb

Midwest Recovery & Adjustment, Inc.
[Seal]
14666 Telegraph Road
Redford, Michigan 48239

Greetings to all,

My name is George Badeen and I am the owner and President of Midwest Recovery and Adjustment, Inc. of Redford, Michigan. As many of you are aware, I have been fighting a legal battle in this State against unlicensed and unregulated third party collection agencies, commonly known in our business as Forwarders. Recently, I was able to secure a major victory when the Supreme Court ruled unanimous in my favor. Naturally, this will create many new and positive changes in the way our Clients and all of us will be able to conduct business in the future. However, I recently learned that their are still many officials in our States' Government that are doing all they can to dilute the impact, if not completely block the ruling of our highest Court from taking affect. If they have their way, these officials and their "Banking Backers", will destroy all we have built and once again, place our businesses and our very lives at their mercy.

Below is a link to a letter that I have written to all of you, and I hope that you will take a few moments and read it over. It provides in greater detail as to, "what's going on", as well as a plan of action and a call to arms to protect our Industry. I have also provided the unanimous ruling of our Supreme Court for your review and information.

Thank You For Your Indulgence,

Sincerely,

George Badeen

Press Here To View Letter & Court Ruling

Midwest Recovery & Adjustment, Inc.
[Seal]
14666 Telegraph Road
Redford, Michigan 48239

George Badeen
President
(313) 817-2100
gbadeen@midwestautoauction.com

July 25, 2014

Open Letter To All Michigan Licensed Recovery Agencies

Dear Fellow Michigan Recovery Agent,

Many years ago I began to wonder, how it was that a Forwarder could operate in our State without a Collection License, and in doing so. avoid the encumbrances of insurance, bonding, taxes, governmental oversight, and act as an unregulated middleman who stood between me, the regulated repossessor, and the regulated Bank? How was it that they could interfere and nullify existing contracts with my clients, then demand the same work for less than half, and retaliate by destroying my business if I refused their "offer"? Over the next several years I brought this question before various levels of our Courts until eventually I reached the Supreme Court of Michigan. Their answer to my question was in total unison; Forwarders are violating Michigan Law by not possessing a State Collection License. Additionally, they also ruled that anyone who has hired an unlicensed Forwarder to repossess a vehicle is also in violation of Michigan Law. You would think that their

ruling would have stopped these Forwarders but you would be wrong. Many still haven't ceased and are demonstrating their arrogance for our Laws by continuing with business as usual.

Despite the decision of our Supreme Court the Attorney General, the top enforcer of the laws of our State, has been slow to do anything; and why? After all this is a slam-dunk! The entire Supreme Court has already ruled the Fowarders to be in violation of our Laws and I understand that there are now some Federal agencies that have begun investigations based on their ruling. Why is our own Attorney General still dragging his feet? Could it be that he's just slow to the draw or is it something else. As a result of his inaction, the Forwarders have been allowed time to mitigate their impending damages that they know are coming and to apply for Collection Licenses. I have been informed that after receiving these "shinny" new licenses, they will not only become "cleansed of their sins" for operating without one to begin with, but will now be "licensed" to continue with the theft of our businesses and the gouging of Michigan's Consumers. I suppose that if the AG were to apply this skewed logic of the law equally, than I guess he thinks that it's "OK" to perform brain surgery, or drive a car without a license. If you get caught, don't worry, he'll give the time you need to get one and all will be forgiven. Obviously. he fails to understand that a license is more than piece of paper. It signifies, that you have met certain legal standards, such as a background check, passing an exam, providing proof of insurance, and certifying that you are a law abiding citizen. Despite the approximate 1.8 million misdemeanor violations,

(the estimated number of vehicles repossessed via these unlicensed Forwarders), it is now apparent that this delay has been intentional to allow time for the construction of a special fast track to legal acceptability for these Forwarders. In short, the standard roadblocks of legality that applied to you and me, are to be removed to accommodate them.

This travesty at our expense cannot continue. Our task is obvious, we must work together and stop these Forwarders from obtaining a license to operate in our State. I ask for your support and encourage you to stand with me in this fight and **attend the next meeting of the Michigan Collection Practices Board on August 7, 2014 at 10:00 A.M., in Conference Room #1, located at 2501 Woodlake Circle, in Okemos**. Please mark your calendar and make plans to attend so that we. can demonstrate to our State's Government that we stand united.

Lastly, in light of the recent Ruling of our Supreme Court, I think it prudent and I would recommend to you, that you ask any Forwarder you are doing business with to provide you proof of their Michigan State Collection License. If they cannot do this, you may consider ceasing all work for them and going directly to the Banking entity who placed the order and inform them that you can no longer accept orders through their Forwarder.

In closing, please allow me to thank you for your support and unity in this battle to take back control of our industry.

Sincerely,

/s/ George Badeen
George Badeen

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No: 19-cv-10532

[Filed November 12, 2019]

GEORGE BADEEN, an individual and on behalf of a proposed class, and MIDWEST RECOVERY AND ADJUSTMENT, INC., a Michigan for profit corp., individually and on behalf of a proposed class,

v.

PAR, INC, d/b/a, PAR NORTH AMERICA, an Indiana corporation; REMARKETING SOLUTIONS, a Delaware limited liability company, for itself and as successors in interest; RENOVO SERVICES, LLC, a Delaware limited liability company; TD AUTO FINANCE LLC, a Michigan limited liability company; TOYOTA MOTOR CREDIT CORPORATION, a California corporation; SANTANDER CONSUMER USA INC., an Illinois corporation; PNC BANK, N.A., an Ohio corporation; BANK OF AMERICA, a North Carolina company; FIFTH THIRD BANK, an Ohio

company; NISSAN MOTOR ACCEPTANCE CORPORATION, a California corporation; THE HUNTINGTON NATIONAL BANK, an Ohio corporation, jointly and severally.

Hon. Judge Victoria A. Roberts

Hon. Magistrate Judge Stephanie Dawkins Davis

DECLARATION OF LESLIE C. MORANT

I, Leslie C. Morant, hereby declare:

1. I am a partner at the law firm Morant Law PLLC and am lead counsel for defendants Remarketing Solutions ("Remarketing") and Renovo Services, LLC ("Renovo") in the above-referenced action. I am over the age of 18, have personal knowledge of the matters set forth herein, and if called to testify as a witness, I could and would testify competently. I make this declaration in support of the Opposition to Plaintiff's' Motion to Remand.

2. Attached as Exhibit 1 is a true and correct copy of an August 15, 2014 email from plaintiff George Badeen to an undisclosed list of recipients. The email attached as Exhibit 1 was first obtained by Renovo the same day it was sent and was subsequently provided by Renovo to me on August 15, 2014.

I declare under penalty of perjury under the laws of the United Sates that the foregoing is true and correct.

Dated: November 11, 2019

Respectfully submitted,

By: /s/ Leslie C. Morant

Exhibit 1

From: Midwest Recovery & Adjustment, Inc. [mailto:auctions@mr44.mr.bmdeda99.com] On Behalf Of Midwest Recovery & Adjustment, Inc.
Sent: Friday, August 15, 2014 12:06 AM
To: jxuereb@xuereblawgroup.com <mailto:jxuereb@xuereblawgroup.com>
Subject: Retraction

View this email in your browser <http://midwestauctionsales.bmetrack.com/c/v?e=4FB300&c=11616&I=8B28EFC&email=rTPQDs%2FfXuAAAqiFzD9KSI0dC00x%2FiwKCJ%2FwYbRnGP0%3D&relid=2E04A964 >

View this email in your browser <http://midwestauctionsales.bmetrack.com/c/v?e=4FB300&c=11616&t=0&I=8828EFC&email=rTPQDs%2FfXuAAAqiFzD9KSI0dC00x%2FiwKCJ%2FwYbRnGP0%3D>

[http://images.benchmarkemail.com/client71190/image1491690.jpg]

I am writing you as a follow up to my Open Letter To All Michigan Licensed Recovery Agencies dated July 25, 2014. One of the forwarding companies has complained that my letter did not accurately characterize the Michigan Supreme Court's Opinion in my case against them. Now, I am not an attorney, so I apologize for any such mischaracterization. However, I did attach the full Supreme Court opinion with my letter so you could read for yourself what the court said. I hope they don't think there was anything

inaccurate in the Supreme Court's opinion? I am attaching another copy so you can please review it if you did not last time.

The forwarder complained about the fact that I said the Michigan Supreme Court ruled that the forwarders were violating Michigan Law by not possessing a State Collection License. They contend the Supreme Court did not say this. They are correct. However, everyone should be clear that the Supreme Court ruled against the forwarders. The forwarders contended that they were not collection agencies under the Act's definition. The Supreme Court in fact stated forwarders do come within the statute's definition of a collection agency when they contact creditors asking for debts to forward to licensed collection agents. This reversed the trail court's opinion which held forwarders were not collection agencies under the statute. The Supreme Court stated ordinarily this would require the forwarders to become licensed. However, the forwarders have a number of arguments that have not been decided by the courts yet. For this reason the Supreme Court did not address in its opinion the issue of whether forwarders were violating Michigan law at the present time by not being licensed.

The forwarder also complained that I said that anyone who hired a forwarder to repossess a vehicle is also in violation of the Michigan law. The forwarder contended the Supreme Court did not say this, which apparently it didn't. However, my attorneys tell me the law is clear that if forwarders are required to be licensed, lenders that contract with them will very likely be violating a different section of the law.

Lastly, the forwarder who complained about my letter did not like the fact that I said forwarders were demonstrating arrogance for our laws by continuing to do business as usual. The Supreme Court said in its opinion that forwarders come within the definition of a collection agency, who are ordinarily required to be licensed under the Occupational Code. It certainly in my opinion is arrogant to continue to search for an exception to the licensing requirements rather than simply become licensed. Nonetheless, as stated above, the court did not find the forwarders are required to be licensed at the present time.

I hope this satisfies the forwarders search for accuracy with respect to the Supreme Court opinion, which in my opinion, was a victory for licensed repossessors in the battle against unlicensed forwarders in our industry.

Sincerely,

[http://images.benchmarkemail.com/client71190/image1491515.jpg]

George Badeen

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