No. _____

In The
Supreme Court of the United States

KEITH ROBERT CALDWELL SR.,

Petitioner,

v.

DODGE CHRYSLER GROUP, ET AL.,

Respondent(s),

On Petition For Writ Of Certiorari
To The United States Eleventh Circuit Court
Of Appeals

PETITION FOR WRIT OF CERTIORARI

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PREFACE: PETITION FOR WRIT OF CERTIORAI

FOR THE SUPREME COURT OF THE UNITED STATES

This petition for writ of certiorari must be deem as precedent. It was the lower courts acts of incompetence, and corruption that led to the filing of this petition. In an exhaustive search, there was no evidence on the Internet and law libraries that prior case law, had concluded that public citizens are to be treated similar in comparison to 'automobile equipment and automobile safety equipment.' The price of human suffering causes tragedies. The cost of replacing automobile equipment has lesser value of the two. This analogy is in reference to two 11th Circuit Court of Appeals cases: (Ayres vs. General Motors LLC, et al, 2000) and (Caldwell vs. Dodge Chrysler Group, LLC, et. al, 2018). The common issue in both lawsuits is whether or not the 11th Circuit Court of Appeals had sufficient constitutional reference when the 11th circuit deemed that the Congress had determined in the Safety Act legislation, that the public has "no right to private action in instances in which two automobile manufactures (General Motors and Dodge Chrysler Group) were sued. Both lawsuits reference the Safety Act legislation.

I respect our laws. This petition does not assert that the law nor the officers of the court are collectively, incompetent or corrupt. It was the ***trial judge and two appeals court panels that corrupted both lawsuits***. The district court trial judge and the appeals panels over-stepped their constitutional authority to assert that the Safety Act, congressional legislation, includes the court's right to re-write or re-define the Safety Act. Constitutional authority to define the language of legislation rests with the legislatures' (the ultimate voice of the people). Bottom line: the courts do not have the authority to re-define the Safety Act (specifically to reflect a consequence in which litigants (the general public) are denied the ability to file a lawsuit when harmed, injured, sustained losses and damages). After research, there is no indication that the courts have accurately inferred "congressional intent of the Safety Act. The courts lacked the appropriate skills and experience to establish or re-write the Safety, but they did in the case of (Ayres, 2000) and then again, in (Caldwell, 2018).

The discussion of incompetence and corruption are applied to the court officers relevant to this petition, not the general constitutional authorizations of the 11th circuit court of appeals. Both lawsuits on appeal should have been inserted into the judicial review process. The public has no idea of the court's revision of the Safety Act; that's absolutely pathetic. This matter is a poster for a class action lawsuit.

Rule 14.1 (a)) SCOTUS QUESTIONS FOR REVIEW:

1 *Did the 11th Circuit Court of Appeals circumvent the appeals process by ignoring significant evidence which demonstrated that the district court trial judge (TJ) obliterated Keith Caldwell's (henceforth referred to as (Caldwell), right to due process of the law,[1] by poisoning the trial process?* The TJ's obstruction of justice, and numerous violations of the Federal Rules of Civil Procedure (F.R.C.P.), were the hallmark of the appeal filed by (*Caldwell*). The decision letter filed by the 11th Circuit Court of Appeals did not address the evidence relative to the TJ's criminal violation of the trial process; (F.R.A.P.) rules; and the ensuing judgment which harmed (Caldwell's lawsuit).

2 Was the rule of law held hostage to the whims of a rogue officer of the court, the TJ *illegally dismiss the Michigan-based defendants,* in the (*Caldwell*) lawsuit, the TJ's critical and unwarranted action set the stage for dismissal of all the defendants in (Caldwell's) lawsuit?

3 Was the unconstitutional decision to dismiss the Michigan based defendants the end result of '*fruit of the poisonous tree*'?[2] The defendants' dismissal motion was flawed and it excluded critical information that the TJ needed to know in advance, before filing the court's first Order to Dismiss in Jul '19 and again in the second Order to dismiss in Oct '19. The

[1] The 14th Amendment to the Constitution of the United States.
[2] "Fruit of the poison tree."

TJ's Order to dismiss violated (Caldwell's) right to due process under the 5th Amendment /14th Amendment - *The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." This miscarriage of justice was the hallmark of the trial judge decision to dismiss the Michigan defendants' from the lawsuit. The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states.* The TJ corrupted the trial process by premature dismissal of the Michigan defendants. The dismissal motion contained perjured content. The defendants had impeded the summons process. The TJ was informed through the petitioner's filings to the court. Still the defendants were dismissed even though they had impeded the summons process.

4. Is perjury, judicial misconduct, violations of the F.R.C.P. & F.R.A.P. acceptable defense strategies to dismiss a legally filed lawsuit, if so, the Rules of the Court (district court & appellate court require massive revision.)

5. Does the approved legislative action, the Safety Act, actually provide the public the right to file a lawsuit based on a Safety Act grievance, or is the 11th circuit court revision (not approved by the Congress nor the public, in play now?)

(Rule 14.1(b) CERTIFICATE OF INTERESTED PERSONS CORPORATE DISCLOSURE STATEMENT

LIST OF PARTIES:

1. Blank, Robert L., Esq., RUMBERGER, KIRK & CALDWELL, Tampa, Florida;
2. Caldwell, Keith Robert Sr., appellant-petitioner-pro se;
3. Corinis, Jennifer Waugh, Assistant United States Attorney;
4. Dodge Chrysler Group, appellee-respondent;
5. Fiat Chrysler Automobiles ("FCA") US LLC (ticker symbols: FCAU and FCA, appellee-respondent;
6. Flynn, Sean, United States Magistrate Judge;
7. Lopez, Maria Chapa, United States Attorney;
8. Marchionne, Sergio, appellee-respondent;
9. Rhodes, David P., Assistant United States Attorney;
10. Scriven, Mary S., United States District Court Judge;
11. Siekkinen, Sean, Assistant United States Attorney;
12. Sweeney, Sara C., Assistant United States Attorney
13. United States Department of Transportation appellee-respondent;
14. United States Attorney's Office, appellee-respondent;
15. Whitehead, Sara Esq., RUMBERGER, KIRK & CALDWELL, Tampa, Florida; and
16. Wise, Mamie V., Assistant United States Attorney.

Corporate Disclosure Statement: (Rule 29.6)

In addition to the persons and entities identified in the certificate of interested persons and corporate disclosure statement in Keith Robert Caldwell Sr., principal brief, the following persons and entities have an interest in the outcome of this case:

1. *11th Circuit Court of Appeals, Atlanta, Georgia. The 11th Circuit Court would be in a bizarre position potentially facing questions as to the reason the court bartered public lives to the automobile manufacturers profits, while the automobile industry continues to flood the United States highways and roads with unsafe vehicles. The 11th Circuit Court's reversal in (Ayres, 2000), is an incompetent assessment of the legislative branch's Safety Act. Their incompetence led to the automobile industry's unwarranted carrot and the industries boost in profits. (Caldwell's) belief is that the 11th Circuit Court's decision in (Ayres, 2000) was the basis for denial of (Caldwell's) appeal (i.e. incompetent judicial legislation), NOT on case merit, or the contents of the appeal package.;*

2. Ayres the petitioner), in (Ayres, 2000) 11th Circuit Court of Appeals case: (Ayres, 2000) appellee;
3. Fiat Chrysler Automobiles ("FCA") US LLC (ticker symbols: FCAU and FCA, appellee-respondent;
4. Florida Law Firm, RUMBERGER, KIRK & CALDWELL, Tampa, Florida;
5. Supreme Court of the United States, Washington, District of Columbia, and,
6. 11th Circuit Court of Appeals in the denial of (Ayres, 2000) & (Caldwell, 2018)

(Rule 14.1(c)) TABLE OF CONTENTS

(Rule 14.1(d)) TABLE OF CITATIONS

Contentions in Support of a Petition for a Writ of Certiorari Rule 14.1(h)

VIII. The 11th Circuit Court failed: to appropriately adjudicate the Petitioner's appeal; address the incompetence and criminal actions Of the U.S. Gov't attorney and the Michigan defendants; address judicial corruption; and a plethora of incompetent trial decisions. Incompetence And corruption doomed the petitioner's lawsuit not actual law. p.17, p18, p19, p20

IX. * The district court trial judge disregarded court rules, the F.R.C.P., and the petitioner's right to a fair and ethical trial. The trial judge facilitated inappropriate use of case facts. The violation led to the subsequent dismissal of the Michigan defendants, even though the court had been informed in advance of the perjured content contained in the Michigan defendants' motion to dismiss. Dismissal of the defendants became an issue analogues to the dubious act of the "*the fruit of the poisonous tree.*" This action doomed the petitioner's lawsuit, and the district court's credibility. The lawsuit became unwinnable. The trial judge had exhibited unwarranted prejudice, she subsequently dismiss the lawsuit.

This act was fully described in multiple district court motions that were filed by the petitioner, before dismissal of the defendants,' and again, in a rebuttal motion filed immediately after the Order to dismiss the Michigan defendants. The poisonous tree concept was described in the Appellant' brief and the Appellant's reply brief. The 11th circuit court did not render judgment on this matter during the appeal process. The trial judge and the 11th circuit panel were more concerned about their paycheck than justice.

(Rule 14.1(e)) CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THIS CASE BY COURTS OR ADMINISTRATION AGENCIES

The only official and unofficial reports of the opinions and Orders entered in this case by courts or administrative agencies, are the decision letters and the findings in 11th Circuit Court of Appeals case (Ayres, 2000). See APPENDIX (A)

(Caldwell, 2018) represents the second time that the 11th Circuit Court of Appeals have weigh in on its opinion and decision in (Ayres, 2000)

There is no other evidence that another Circuit Court of Appeals has concluded that the public has no private right to action. In (Caldwell's) research the finding is that no circuit court has upheld the findings of the 11th Circuit Court. Based on (Caldwell's) research (Caldwell's) challenge to (Ayres, 2000) represents the first challenge to the 11th Circuit Court's decision in that case.

The executive branch offices that the 11th Circuit Court claimed as key federal agencies in the (Ayres, 2000) decision letter, are not federal resources to act as agents of individual right to action. The agencies, do not perform the work as described in the decision letter. The (U.S. Attorney's Office & the U.S. Department of Transportation), have not process one single case in regards to this issue. Neither Agency has appointed an office or individual to address this matter.

In other words, the court in (Ayres, 2000) had no constitutional basis for assigning work to an executive branch agency (AG/Sec. DOT). Therefore no one in

the federal government provided oversight on the matter of filing an individual lawsuit against the automobile manufacturers in the event violations of the Safety Act occur, and an individual chooses to exercise his right to file a lawsuit. The 11th Circuit ruling in (Ayres, 2000 & Caldwell, 2018) were catastrophically flawed and without constitutional basis.

Summary: the courts stepped outside of their lane to establish a revision to the Safety Act, which was previously signed into law by Congress and the President. As of this filing, the Congress has not inserted into law, the 11th circuit court's revision of the Safety Act in (Ayres 2000). Perhaps no congressional action on this matter, sends a clear message to the court that congress may or may not concur with the courts restructuring of the Safety Act. In 20 years since the court's revision of the Safety Act law, there has been no movement to assert the courts change to the legislation. Congress has not certified the change. The public is unaware of the court's action. The (Caldwell, 2018) lawsuit was sufficiently based on the Safety Act. The district court assigned a corrupt trial judge to derail the lawsuit. The court of appeals dismissed the lawsuit because of a pre-arranged in-house 'memorandum" which stipulates that the 11th circuit court will not overturn the decision of a prior panel. How is the courts edict legal? What is the impact of the appeals court adjudication of appeals in a fair and just manner? The (Caldwell, 2018) appeal was not lawfully adjudicated. The decision letter took all of 10-minutes to construct. The appeals court extorted monies from (Caldwell) in the form of a filing fee and then sand bag the legal review process.

The appeals court action was the work of a confused mindset. It is the petitioner's belief that the United States Gov't owes (Caldwell) monies for costs, and associate damages of all persons involved in the three vehicle accident that occurred on October 16, 2016, at Largo, Florida.

(Rule 14.1(e)) BASIS FOR JURISDICTION

This is a pro se petition for a Writ of Certiorari submitted to the Supreme Court of the United States, by (*petitioner-Caldwell*). Caldwell's lawsuit was appealed to the 11th Circuit Court of Appeals. On appeal the 11th Circuit Court was denied by a panel of judges from that court. Caldwell had filed a lawsuit *Caldwell vs Dodge Chrysler Group, et al, Case No. 8:18-cv-2525-T-35SPF (2018)*, at the United States District Court for the Middle District of Florida (Tampa). Caldwell's lawsuit was dismissed by the trial judge at the district court.

Rule 13 of the Court's rules is the statutory provision under which the petitioner has filed at the court a Petition for a Writ of Certiorari. The jurisdictional and final right of action is the Supreme Court of the United States.

Caldwell therefore, submits his petition for Writ of Certiorari to the highest court in the United States.

(Rule 14.1(f)) CONSTITUTIONAL PROVISIONS

1. The 5th & 14th Amendments of the Constitution of the United States: *The Constitution states only one command twice.*[3] *The Fifth Amendment* ***says to the federal government that no one shall be "deprived of life, liberty or property without due process of law."*** *The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an* ***assurance that all levels of American government must operate within the law ("legality") and provide fair procedures.***

2. Judicial Corruption https://www.uscourts.gov/judges-judgeships/judicial-conduct-disability

Under the Judicial Conduct and Disability Act and the Rules for Judicial-Conduct and Judicial-Disability Proceedings[4]*, The Judicial Conduct and Disability Act of 1980 28 U.S.C. §§ 351–364 anyone can file a complaint alleging a federal judge has committed misconduct ... .*

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[3] Cornell Law School (Strauss, 1992) Introduction: Due Process https://www.law.cornell.edu/wex/due_process

[4] The judicial conduct and disability review process cannot be used to challenge the correctness of a judge's decision in a case. A judicial decision that is unfavorable to a litigant does not alone establish misconduct or a disability. An attorney can explain any rights you have as a litigant to seek review of a judicial decision. https://www.uscourts.gov/judges-judgeships/judicial-conduct-disability

3. Official Corruptions in May 2021[5]

Official Corruption Prosecutions for May 2021

Number Latest Month	21
Number Previous Month	34
Percent Change from 1 year ago	43.8
Percent Change from 5 years ago	-32.1

Table 1. Criminal Official Corruption Prosecutions

The latest available data from the Justice Department show that during May 2021 the government reported 21 new official corruption prosecutions. According to the case-by-case information analyzed by the Transactional Records Access Clearinghouse (TRAC), this number is down from 34 the previous month.

Given the criticism of judicial elections as a poor method to select qualified judges, we might expect elected judges to fare worse in this study than unelected judges. According to this sample, a similar proportion of elected judges were caught acting corruptly as unelected judges, but elected judges were caught accepting a larger number of bribes relative to the number of cases that they handle.[6]

[5] TRAC Reports Official Corruptions Prosecutions for May 2021
https://trac.syr.edu/tracreports/bulletins/corruption/monthlymay21/fil/

[6] 52 See supra Section II. C. 53. This assumes that elected judges handle a similar proportion of cases as appointed judges. *54. See supra* Section II.C.2 53 54

Finally, it is worth noting that three investigations were responsible for prosecuting twenty-one of the thirty-eight judges in the sample. In all three cases of large-scale corruption studied here, the supervising judge was corrupt and, in at least two of the cases, he appeared to gain the most from the corruption scheme. In all three cases of large-scale corruption studied here, the supervising judge was corrupt and, in at least two of the cases, he appeared to gain the most from the corruption scheme. (TRAC Reports Official Corruptions Prosecutions for May 2021) [7]

[7] TRAC Reports Official Corruptions Prosecutions for May

(Rule 14.1(g)) STATEMENT OF THE CASE

Keith Robert Caldwell, Sr., (Caldwell) sued the United States Department of Transportation, the Attorney General, and the United States Attorney's Office ("the federal Defendants,") and Sergio Marchionne, Dodge Chrysler Group and Dodge Chrysler Group, the parent organization ("the Michigan-base defendants"). The lawsuit is related to 3-vehicles car accident which occurred in the State of Florida, on October 2016. The 2013 Dodge Durango (Durango), was cited as the vehicle that caused the accident. The Durango is owned by (Caldwell).

During the process of Service of the Summons, both groups of defendants (the federal defendants and the Michigan base defendants) had impeded in the process of service of the summons. The federal defendants perjured the summons process by filing a motion to dismiss which alleged that the United States Department of Transportation was not served summon for reasons attributed to (Caldwell). Concurrently the motion to dismiss alleged that (Caldwell) had fail to serve summons to the United States Attorney's office. The defendant's allegations were meritless and their motion to dismiss was outrageously flawed. Caldwell filed a motion to clarify that the defendant's motion to dismiss contained erroneous information. The trial judge (TJ) was sufficiently updated on the service of summons process to the federal defendants. The federal defendants' representative decision to file a notice of appearance five months after the case trial commenced was the reason that the federal defendants' were entered into the trial five months late.

The Michigan base defendants, similarly, entered the trial three months late and they too filed a motion to dismiss due to improper service of the summons. In this instance the defendants had aggressively impeded the service of summons process. The defendants' motion did not inform the (TJ) that they had impeded the service of summons process. The dismissal motion contained multiple erroneous allegations. The (TJ) was informed of the erroneous information in multiple motions filed by (Caldwell). Despite violating the "fruit of the poison tree" principal, the TJ dismissed the Michigan base defendants from the lawsuit.

Despite multiple filings, inaccuracy, and flaws in both sets of defendants motion to dismiss, the TJ dismissed the Michigan base defendants' in the first Order to dismiss in July 2019, and subsequently dismiss the federal defendants in the second Order to dismiss in October 2019, which ultimately ended the Caldwell lawsuit.

On appeal, Caldwell introduced a plethora of allegations describing the corruption that was exhibited by the (TJ). The 11th Circuit Court of Appeals did not address: the (TJ's) criminal behavior; the (TJ's); failure to adhere to the rules of the court; the (TJ's) obstruction of justice and obstruction of the trial process; the (TJ's) decision to accept the Michigan base defendants' notice of appearance three months after the trial commence; the (TJ's) decision to accept both groups of defendants perjured and false accusations in their motions to dismiss, while ignoring all of the counter-motions filed by (Caldwell) throughout the trial, over the period of November 2018 to October 2019. The (TJ) failure to maintain control of the

adjudication process was a disgrace to the law, the Federal Rules of Civil Procedure, and the rules of the district court. The 11th Circuit Court, cited two justifications for denial of the appeal: ***the court's in-house commitment to each of the panels of the court, that their decisions would not be changed***, and when ordered by the Supreme Court of the United States.

(Caldwell's) appeal was dead on arrival at the 11th Circuit Court as soon as (Caldwell's) case filing fee check, cleared Wells Fargo bank. (Caldwell's) challenge to the (Ayres, 2000) case which was decided on appeal by the 11th Circuit. The panel's incompetence in understanding the legislative process and the trial judge criminal conduct, were the centerpiece of (Caldwell's) appeal. The 11th Circuit Court was not going to reverse the lower court's decision in (Caldwell, 2018), doing so would mean taking a win away from the (Ayres, 2000) case.

In (Caldwell, 2018) the 11th Circuit Court sustained its ruling in (Ayres, 2000), and simultaneously ordered that the public does not have ***"private right to action; file a lawsuit" against an automobile manufacturer, when the public is involved in a vehicle accident, that involves dysfunctional or inoperable automobile safety equipment; even if the vehicle accident produce fatalities.*** The 11th Circuit Court's reasoning in "inferring congressional intent of the Safety Act", that was authorized by elected members of Congress (the actual voice of the public and the legitimate agent of change in the Constitution of the United States), voted the Act into legislative law. Despite the fact that no members of the judicial branch were participants or voted to establish the Safety Act's revision. FACT: ***The 11th Circuit***

Court revised the Safety Act, the appeals panel created a new law, the judicial branch had turned the legislative branch Safety Act, into a punitive action to wreak havoc on the entire nation. There was no participation by any of the 535 *(elected)* members of Congress, to vote on the new Safety Act revision, which was created by the judicial branch, not by the legislative branch, of the U.S. government.

(Rule 14.1(g.1)) STATEMENT OF THE CASE - JUDICIAL MALFEASANCE (the District Court & the Court of Appeals)

For starters, the District Court & the Court Of Appeals both corrupted (Caldwell's) case. Multiple motions filed at the district court supports numerous instances in which Judge Scriven had corrupted the trial process. The motions were on point, damaging, contained critical assessments of the trial judge conduct, contained acts of favoritism to the federal defendants and the Michigan-based defendants; and, finally:

[8] ***"The defendants' motion to dismiss contained perjured content and miss-information to side-track the trial judge. Despite informing the trial judge that the defendants' motion to dismiss met the description of "the fruit of the poisonous tree," the trial judge used the power of her office to dismiss the defendants, and the lawsuit. The trial judge's actions are the epitome of judicial misconduct and corruption. Judge Scriven's scams violated every rule in the book. The judge was a partial participant in the trial while breaking every protocol in the rule book. The trial judge circumvented judicial doctrine, to poison and sabotage (Caldwell's) lawsuit."***

Judge Scriven did not respond to (Caldwell's) case filings; Mary S. Scriven *made no attempt to mask the fact that she purposively sabotage the trial.* The account of the trial judge's partiality was noted in the Appellant's brief, and the Appellant's reply brief. Despite the fact that the Appellees' failed to address Scriven's horrendous conduct, partiality, abuse of her office, manipulated dismissal of the case despite being informed of the fruit of the poison tree dilemma, and

[8] In the Petitioner's own words, describing the criminal actions used by the trial judge who used the power of her office to sabotage the trial in the (Caldwell, 2018) lawsuit case.

consistent judicial misconduct, the 11th circuit court failed to review her trial performance on appeal.

The 11th Circuit Court of Appeals, despite a plethora of credible instances of judicial misconduct, failed to address the trial judge's criminality, in the decision letter or the panel's presentation of the case facts, on appeal. The court was asked to adjudicate the entire appeal (all parties). Instead, the panel changed the case name description that was described in the original complaint, and the appeal filed at the 11th circuit court, to the case name description that was noted in the 11th circuit court decision letter and the motion for rehearing, **FROM:** *(the district court) (Keith R. Caldwell vs. Dodge Chrysler Group, LLC, et al)* **TO:** *(the 11th circuit court) (Keith R Caldwell vs. U.S. Department of Transportation et al).* The 11th circuit court eliminated the Michigan defendants' as though the defendants did not have stake in the appeal process. The court's action may pass muster in terms of how the 11th circuit court typically names the parties in the appeal. However, by omitting the Michigan defendants from the appeal case name description and the appeal process, the court ultimately stipulates that the Michigan defendants' were not part of the appeal process. By default, the court admits that it agreed with the district court's decision to dismiss the Michigan defendants despite a mountain of evidence that was provided to the appeals panel for review.

In the Appendix, there is a newsletter that was publish by the organization whom sponsored the Attorney's that represented General Motors Corporation (G.M.) in the (Ayres, 2000) 11th circuit court case. The attorney's that duped the

11th circuit court in to changing the Safety Act, essentially mocked the court's decision while acknowledging that the court had in fact changed the Safety Act. The automobile manufacturers profited from the courts 'dubious and unwarranted' change. The purpose of the Safety Act is to endorse an environment in which automobile manufacturers, Sec. DOT, the AG, US, and the public, to remain focus on overall safety in the nation. G.M. is a highly regarded automobile manufacturer in the United States. They have organizational resources which 10's of millions of the public do not have access or monies to corrupt the federal court system. In the newsletter, the G.M. hired attorney's, acknowledged that the appeal they argued on behalf of G.M., had indeed changed the Safety Act, from its original context; thus creating new law, which was not instituted by the sanctioned legislative process. In other words, the 11th circuit court had established a critical change to the Safety Act. Even though there were no experts from the legislative branch to advise the court, on the process to legitimize the court's legislative action. The public was collectively harmed by the court's incompetence and their failure to render legitimacy to the revised Safety Act.

How did a well-funded G.M. attorney waltz in to the 11th Circuit Court to argue a critical revision to the Safety Act legislation, which was voted on, by 535 elected members of the House, Representatives? A revision that provides all automobile manufacturers' a get-out-of-jail-free card. The issue in question stipulated that ***the Congress (the voice of the public), had actually intended that the public "does not have the right to private action in the Safety Act."*** The 11th circuit

ruling is a '*direct slap in the face to the public*' the decision betrays the public trust in the judicial branch of our government. The 11th circuit panel injected an incompetent decision that changed the entire Safety Act, legislation.

In researching this issue, there is no evidence that the 11th circuit bothered to submit the (Ayres, 2000) decision through a judicial review process. When judicial decisions create a critical change in how the Congress and the executive branch functions, and to provide proper context of the change to the nation's laws that are produced by congress, ***those cases must pass through the judicial review process.*** The 11th circuit obliterated the public's right to file a lawsuit against any automobile manufacturers. The court actually confirmed its ignorance of operational processes relative to the Legislative Branch of the United States Gov't. It IS NOT the function of the legislative branch to write legislation that harms the public. This oversight was sufficiently introduced in (Caldwell, 2018). In (Caldwell, 2018) the 11th circuit court ratchet up the incompetence of the panel's decision, by denying the appeal. The (Caldwell, 2018) lawsuit was based on live HUMANS (3-adults and 2-children in a 3-vehicle accident in which the vehicle brakes failed to stop at an intersection), the tragedy of destruction of two vehicles, new vehicle demands, hospitalizations, medical costs, 3-years of triple the rate of automobile insurance, State restrictions, County costs, financial restitution, etc. The fact that the federal courts basically turned their back on (Caldwell, 2018) while citing the court's mindless corruption of the Safety Act, in (Ayres, 2000), is pathetic. The court make decisions on whom is eligible for the death penalty. Yet, the court lack the

credentials to properly interpret legislative branch laws like the Safety Act, whose focus is public safety.

Credibility: the credibility of the district court and the 11th circuit court was corrupted in (Caldwell, 2018). The district court assigned a trial judge whom was unable to realize her own incompetence and deficiencies in the law. The TJ had corrupted all aspects of the trial process. Judge Scriven dismissed defendants from the case, even though the defendants had filed a motion to dismiss which included unconscionable perjured content, issues that the plaintiff had filed motions to the court for action, yet the trial judge dismiss the defendants and ultimately dismiss the (Caldwell, 2018) lawsuit. Any federal judge that is ignorant as to the purpose of the "fruit of the poison tree" and actively serves on the bench, is useless to the public. The trial judge did not care. Judge Scriven's criminal actions can be dealt with through the judicial misconduct process. But, the damage that she orchestrated; couple with the 11th circuit court's decision to not change a prior panel's decision; obliterated the 14th Amendment; the Constitution of the United States; F.R.C.P.; F.R.A.P.; Due Process Clause; the Court Rules (2) and, more importantly, (Caldwell, 2018) lawsuit. *The corruption at the district court and the appeals court was an absolute disgrace to the federal court system*.

IX Allowance of Writ
~~X. Closing Writ of Certiorari~~

(Rule 14.1(h)) STATEMENT AMPLIFYING REASONS RELIED ON FOR ALLOWANCE OF THE WRIT OF CERTIORARI (Rule 10):

(Caldwell's) reasoning is restoration of the judicial process in the use of the Rule of Law: (the district court, the appeals court and the Supreme Court) in adjudicating, *Keith R. Caldwell, Sr., vs. Dodge Chrysler Group, et al.* lawsuit. The district court judge Mary S. Scriven, disgraced the law by turning the court room trial process into a carnival of clowns circus. There is no pulling back from the criminality and unjustified activities that she orchestrated in the process of a fictitious trial. If ever there's a stellar case for a mistrial, Ms. Scriven has written the blueprint for others to follow. As the TJ at the district court, she unleashed all the attributes of a corrupt judge. The trial judge corruption was included in the Appellants brief and the Appellant's reply brief.

The 11th Circuit Court of Appeals cited two compelling reasons for denying (Caldwell's) appeal. The reason that included a written stipulation that the 11th Circuit Court of Appeals will not change the decision of a prior panel's findings. What does this stipulation have to do with justice or the law in general? The panel of judges should examine each case on merit case law. The appeal panels are shielded by the 11th circuit's appeal evaluation process. Public trust in the appeal process lessens when an unqualified panel renders a decision outside of the scope of their professional skills and qualifications. (Caldwell's) appeal targeted the 11th Circuit Court's decision in and old case (Ayres, 2000). Since the (Caldwell) appeal was set to be denied due to a prior panel agreement in (Ayres, 2000). What was the

reasoning that the 11th Circuit Court extorted filing fee costs in a case that was pre-determined at the time of filing? Perhaps this case in fairness should have been moved to the U.S. Court of Appeals in Washington, D.C. on jurisdictional exemption. The (Caldwell) appeal was not evaluated by the 11th Circuit Court, on the basis of merit. The text of the panel's findings makes this assumption abundantly clear.

(Caldwell) is forced to ask the Supreme Court of the United States to weigh in on the incompetence of the panel whom reviewed the appeal in (Ayres, 2000) and also determine if the panel that reviewed (Caldwell, 2018) got it right. Neither of the panels had a legislative background to speak for the intentions of the Congress relative to the Safety Act and "private right of action." Both panels had no background in the manner in which legislative law is crafted, research, written, vetted, etc. Americans did not exercise their vote to select 535 representatives to the House to write legislation that harms the public. In (Ayres, 2000) the panel were incompetent in their decision process by stipulating that Congress did not authorize ("no private right to action"). In (Caldwell, 2018) another panel asserted the same finding. However, in this instance, the panel shutdown the Caldwell appeal even though it sought restitution for multiple adults and children. The incompetence on the part of the 11th Circuit Court rewarded General Motors (Ayres, 2000), and Dodge Chrysler (Caldwell, 2018). Who will be speaking in behalf of the judicial branch hypothetically, when a Toyota school bus engine blows up on a crowded interstate and the media is force feeding video of death and destruction on the 6:00

news from Maine to California? Will the Congress step in and take responsibility for the injustice of the Safety Act revision by the court, probably not? The judicial and legislative branch may be consumed in finger pointing as the public hones in on another automobile manufacturers tragic mishap.

(Rule 14.(h.1)) FAILURE OF CREDIBILITY IN THE FEDERAL COURT SYSTEM (In case: Keith R. Caldwell vs. Dodge Chrysler Group, LLC, et al. (2018))

The (Caldwell) petition for a Writ of Certiorari is the appropriate step in the appeal process. This step should not have been orchestrated. When the lawsuit was filed at the district court for the middle district of Florida (Tampa), the expectation was to have quick resolution. There was no prior knowledge of the criminal attributes and judicial abuse of power by the trial judge (TJ), Mary S. Scriven, nor prior knowledge of the 11th Circuit Courts behind the scenes agreement that included the appeals courts "in-house agreement to not overturn a prior panel's decision." The 11th circuit court's in-house arrangement undermines 'justice, the law, and the appeals processes'. The 11th Circuit Court has put to rest that an appeal in this court is riddled with opportunities for corruption. There is absolutely no way that the court demonstrates fair and impartial appeals process adjudication. The court panel did not actually read (Caldwell's) appeal brief. Why should the panel have read the case? ***The in-house agreement was the agent that responded to (Caldwell's) appeal, not justice and certainly not the law?*** The court accepted (Caldwell's) appeal while fully understanding that the appeal was set to be denied as soon as the filing fee check cleared. This is a poster example of judicial corruption, and a 'cash-cow of injustice' for the 11th circuit court. *The court should have returned the appeal filing fee check along with the pathetic and pre-determined decision letter.*

Does this circuit court arrangement exists in all of the circuit courts? It is a safe bet to assume that the media, and the public are unaware of the assault on our civil liberties and the appeals court process.

(Caldwell's) lawsuit in Keith R. Caldwell, Sr., vs. Dodge Chrysler Group, LLC, et al, is the poster case for allegations that the 11th Circuit Court predetermined that (Caldwell's) challenge of the 11th Circuit Court's ruling in the (Ayres, 2000), was a non-starter, soon after the filing fee payment process was completed. The probability that the district court trial judge was aware that an appeals panel would adhere to the 11th Circuit Court's ordained money-making business strategy was the reason that the trial judge free-lance adjudication of the district court trial.

The trial judge Mary S. Scriven had no reason from a legal perspective, to place her career on the line by corrupting the trial process; but she did. The TJ had to know about the illegality of 'the poison tree concept'. Still she corrupted the trial by dismissing the case under a cloud of incompetence and judicial shenanigans. The Michigan base defendants had impeded the service of summons process. Dodge Office of the General Counsel, sent an employee from that office to address the process Servers, hired by (Caldwell). The woman claimed to be a Manager at the general counsel's office. The woman refused to accept the summons. (Caldwell) filed a motion to inform the trial judge of the Michigan base defendants' refusal to accept the summons from the district court in Florida. The subsequent filing of the defendants' dismissal motion, did not include the fact that the petitioner (Caldwell)

actually hired two different process Server organizations to serve the Michigan defendants' summons. Both Server organizations were successful. These facts were excluded from the defendants' dismissal motion. Nonetheless, the trial judge dismissed the Michigan defendants from the lawsuit in July '19. It was at this point that the (Caldwell) lawsuit, was severely compromise. The dismissal motion should have included the fact that the summons process was impeded by the Michigan defendants. Additionally, the defendants' motion to dismiss, was not served to the petitioner. The petitioner's law suit was powerless to bounce back after the defendants' had corrupted the trial process.

Upon dismissal of the lawsuit the petitioner filed a motion to rebuke the trial judge, afterwards the lawsuit disappeared down the drain. Mary S. Scriven should have denied the Michigan defendants' dismissal motion after the defendants impeded the petitioner's efforts to serve summons, granting the motion to dismiss became part of the "poisonous tree."

The trial judge compromised the case and she ultimately shutdown the lawsuit. Perhaps the trial judge had prior knowledge of the 11th Circuit Court pact with their panels, to not change prior panels' appeal decisions. This understanding may have propelled the trial judge to free-lance the trial process while facilitating her comfort level to abuse power: recklessness; misguided ethics; violations of the Rules of the F.R.C.P.; failure to follow district court rules in regards to ethics and integrity; criminal malfeasance; lying to the public about her fitness to conduct a district court civil procedure. The trial judge's mental state and conscious efforts

were detrimental to the petitioner's lawsuit, and (Caldwell's) efforts to have Dodge Corporation assume responsibility for a three vehicle accident in Florida. The trial judge was apparently not incapable of presiding over a multi-state civil trial (Florida and Michigan).

The trial judge, may have been a victim of the ensuing corruption of justice when the 11th Court of Appeals issued a directive (in-house agreement on the operational strategies of the appeals process ("the prior panel case decision).

Judicial misconduct occurs when a judge acts in ways that are considered unethical or otherwise violate the judge's obligations of impartial conduct; and violating other specific, mandatory standards of judicial conduct, such as judicial rules of procedure.

Judicial investigative committees are rarely appointed. According to U.S. Court statistics, only 18 of the 1,484 judicial misconduct complaints filed in the United States Courts between September 2004 and September 2007 resulted in the formation of judicial investigative committees.[9] Houston Chronicle 2008 Elected Versus Appointed Judges[10]

Corruption in Our Courts – Yale Law School Legal Scholarship

Cataloguing cases of judicial malfeasance)

Given the duties that accompanies the trial judge position in courts around the nation. The trial judge cannot demonstrate partiality in presiding over the trial. Function, Black's Law Dictionary summarizes that the "trial judge" is the term

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[9] Federal judges under scrutiny Houston Chronicle, October 13, 2008

[10] *Elected Versus Appointed Judges[10]*

Corruption in Our Courts – Yale Law School Legal Scholarship
What it Looks Like and Where It Is Hidden PDF Stratos, Pahis – cited by 28 – judicial corruption; Geoffrey P. Miller, Bad Judges, 83 TEX L.REV. 431 (2004). The Yale Law Journal. http://digitalcommons.law.yale.edu

given to the judge who will preside over the trial. Black's Law Dictionary. There is no ambiguity in this expectation. The F.R.C.P. and the F.R.A.P. cites numerous instances of the importance and credibility of the trial judge. If the trial judge decides to "Deep 6"[11] the rules and regulations of the trial process for either party, partiality sets in, and the trial will exhibit unfair treatment right up 'til the time in which the decision letter is filed.

(Caldwell) the petitioner in this case, purpose is to express to the Supreme Court of the United States the importance of their decision to right an injustice, due to a judicially and factually flawed dismissal motion which was orchestrated by the Michigan defendants to a further corrupt a sufficiently corrupt trial judge, at the district court. Illegal dismissal of the Michigan base defendants from the (Caldwell) lawsuit, in turn the U.S. Gov't entered the (Ayres, 2000) case into the lawsuit, and the appeal. The 11th Circuit Court of Appeals, had denied the right to private action in (Ayres, 2000) which cause the court to affirm the decision in (Caldwell, 2018), NOT based on merit of the case, denial was based on an in-house agreement to the active judges, that there are no reversals of prior panel decisions. Presumably, the 11th Circuit Court did not actually read or adjudicate the (Caldwell, 2018) appeal case. There was no incentive for the 11th Circuit Court panel to read the contents of (Caldwell's) appeal. Why would the panel bother to read the case? That would have been pointless. The decision letter affirm that the decision was determine before the appeal filing fee, cleared Wells Fargo bank. The 11th Circuit Court appeal process

[11] Military terminology when a soldier makes an independent decision to disregard specific rules and protocols for an action, behavior or event

circumvents the purpose of (Caldwell's) right consistent with the "due process clause."

The 11th Circuit Court's decision in (Ayres, 2000) is incompetent, at best. The court managed to take a well-crafted legislative Safety Act, and turn it on its head by "*inferring congressional intent*" to legislation that provided the automobile industry a safe haven in the event the public files a lawsuit seeking to challenge automobile manufactures, while they put faulty safety equipment, and dysfunctional vehicles on the road as noted in (Caldwell's) lawsuit. It was the 11th circuit panel incompetence and absolute ignorance of the process to create legislation that 535 elected members of the Congress had written and voted to protect the public, upon the signature of the President. The Congress (voice of the public) did not intend to eliminate the public's right to private action (by filing a lawsuit) under the Safety Act. The panel effectively setback the Congress, and the public 100 hundred years, by determining that their decision in (Caldwell, 2018) is in the best interest of the public. Additionally, there is no evidence to conclude that the Congress were consulted in advance of the court's decision to change the text, language, purpose, and the intent of the Safety Act; absolutely no coordination. The panel's ignorance of the process in which the legislative branch craft and vet legislation, long before they vote on passage, was obvious in (Ayres, 2000), and in (Caldwell, 2018).

By affirming the lower court's ruling in (Caldwell, 2018), the 11th Circuit Court, without the benefit of the traditional appeals process, became an obstruction

of justice, in the case. The court's appeal process was corrupted by the agreement to (not change a prior panel's appeal decision).

The court therefore affirmed that exclusion of the individual right to public action was congressional intent. Caldwell's case was different from (Ayres, 2000) in that forfeiture of right to public action includes: 3-vehicle automobile accident which cause physical harm; loss of private property; thousands of dollars in vehicle repairs; ***three adults; two children***; one vehicle totaled; traffic fines; license restrictions; driver safety training; tripling of (Caldwell's vehicle insurance); hospitalization bill $27,000.00; medical treatment, physical therapy, etc.

The 11th Circuit Court panel cannot say with a straight face that Congress intended to exclude (Caldwell's) right to file a lawsuit. The court's decision destroyed the original intent of the Safety Act, which is to enforce safety, operable automobiles, and safety measures to force the automobile manufacturers to enhance public safety in the manufacturing of safe automobiles, trucks, and other wheeled vehicles.

The American people have no idea as to what the court has done to our Safety Act. The American people have no knowledge of the court's decision to alter the Safety Act. The 11th Circuit Court handed General Motor's Corporation a carrot in (Ayres, 2000). The same court handed Dodge Chrysler hundreds of thousands of dollars in (Caldwell, 2018) ... What's next ... perhaps the court will provide Toyota a carrot in the event a school bus blows up in flames on a major interstate, highway or road. Perhaps the thought of woman and children losing their lives because the

11th circuit rewrote a provision in the Safety Act, that exclude the public's right to file a lawsuit.

The 535 elected members of the Congress are often guilty of curious errors in judgment, but in 65 years Congress has never issue a mandate in the form of a law, that purposively exclude the public's right to sue, indicative to negligence on the part of automobile manufacturers. The U.S. Gov't, is not in the business of exerting their power to advise the public on the issue of lawsuit. That's not a function of government. The fact that members of the judicial community believe it is okay to refuse the public the right to file a lawsuit, demonstrate justification for separation of power.

What are the odds that the 11th Circuit Court panel would not have sued Toyota, General Motors, Dodge, Volkswagen, Cadillac, Jeep, Fiat, Ford, etc., if a family member were harmed or killed because the automobile manufacturer was in a rush to get the cash registers humming, at the expense of ignoring faulty brakes or an worn engine valve? Safety features are the components that save lives, the court had no business free-lancing in the business of the legislative branch. The tragedy is that the courts do not read daily accident reports from national newspapers, and on the 6:00 pm news, from Maine to California.

The federal agencies that the court stipulated as primary responsible agents to manage public Safety Act concerns, the U.S. Attorney General, and the Secretary, U.S. Department of Transportation, do not have an office within their organizational structure that mediates for the public's right to file a lawsuit;

absolutely none. The U.S. Gov't is not the agent to advise the public when to sue or not to sue. American's are fully competent in the lawsuit process. The majority of Americans know when to sue or not sue automobile manufacturers or any other manufacturers. The concept of "Big Brother" departed in the 1970's.

The U.S. gov't does not care about an individual vehicle accident. The 11th Circuit Court fumbled this matter in (Ayres, 2000), and (Caldwell, 2018), the Supreme Court of the U.S. owns this matter now. *The public demands common sense not judicial legislation* relevant to individual's right to file a lawsuit.

What happened to the "judicial review process?" The 11th circuit clumsy response to (Ayres, 2000) is pathetic. Congress does not write laws that harm the public. The courts have no idea as to the congregational process of legislation. The public does have the right to private action to file a lawsuit citing Safety Act provisions. The 11th circuit missed the mark on the appeals process in (Caldwell, 2018) by a long, long, country mile.

PETITIONER'S CASE FACTS vs. THE 11TH CIRCUIT COURT DECISION

In the Appendix, there is a newsletter that was publish by the organization whom sponsored the Attorney's that represented General Motors Corporation (G.M.) in the (Ayres, 2000) 11th circuit court case. The attorney's that duped the 11th circuit court into changing the Safety Act, had essentially mocked the court's decision, while acknowledging that the court had in fact changed the Safety Act, in his words "... the court made new law." Making law is the function of the legislative branch of the U.S. government. The attorney goes on to state that the automobile manufacturers will be happy with the 11th Circuit's ruling in (Ayres, 2000).

The automobile manufacturers profited from the courts 'unwarranted' to the change. The purpose of the Safety Act is to endorse an environment in which: automobile manufacturers, the Secretary of the DOT, the U.S. AG, the U.S. government, and the general public, to remain focus on overall safety in the nation. G.M. is a highly regarded automobile manufacturer in the United States. They have organizational resources which 100's of millions of the public do not have access or monies, to corrupt the federal court system. In the newsletter, the G.M. hired attorney's, acknowledged that the appeal they argued on behalf of G.M., had indeed changed the Safety Act, from its original context; thus creating new law, which was not instituted by the sanctioned legislative process. In other words, the 11th circuit court had established a critical change to the Safety Act. Though there were no experts from the legislative branch to advise the court, on the process to legitimize the court's legislative action. The public was collectively harmed by the court's

incompetence, and the courts failure to render legitimacy to the court's revision to the Safety Act.

How did a well-funded G.M. attorney waltz into the 11th Circuit Court to argue a critical revision to the Safety Act legislation, which was voted on by 535 elected House Representatives? A revision that essentially provides all automobile manufacturers' *a get-out-of-jail-free card.* The issue in question stipulated that ***the Congress (the voice of the public), had actually intended that the public "does not have the right to private action."*** T There is no basis to render this revision. The 11th circuit court's revision is a '***direct slap in the face to the public'*** the decision betrays the public trust in the judicial branch of our government. The 11th circuit court panel had injected an incompetent decision that revised the legislative version of the Safety Act.

In researching this issue, there is no evidence that the 11th circuit bothered to submit the (Ayres, 2000) decision through a judicial review process. When judicial decisions create a critical change in how the Congress and the executive branch functions, and to provide proper context of the change to the nation's laws that are produced by congress, ***those cases must pass through the judicial review process.*** The 11th circuit obliterated the public's right to file a lawsuit against any automobile manufacturers, while citing the Safety Act. This oversight was sufficiently introduced in the Appellant's brief and the reply brief, in (Caldwell, 2018). In (Caldwell, 2018) the 11th circuit court had ratchet up the incompetence of the appeal panel's decision, by denying the appeal.

The fact that (Caldwell, 2018) lawsuit was based on an actual victims which included: (3-adults and 2-children in a 3-vehicle accident in which the vehicle brakes failed to stop at an intersection), the cost of the destruction of three vehicles, new vehicular demands, hospitalization, medical costs, 3-years of triple the rate of automobile insurance, State of Florida driving restrictions, penalties, financial restitution for all of the victims. The 11th circuit basically turn their back in the (Ayres, 2000) case. However, in (Caldwell, 2018) the 11th circuit up'ed the ante by concluding that even though Ayres, et. al, in 2000 was about allege dysfunctional automobile equipment, and General Motor's role in that transaction, the Caldwell et. al, in 2018 case was all about the human toll that resulted from a failed set of brakes on a Dodge Corporation 2013 Durango. This matter is larger than two court cases. The 11th circuit court turned rogue, on all Americans. The level of incompetence by the federal court, while citing the 11th circuit's mindless corruption of the Safety Act, in (Ayres, 2000), and by confirming the court's incompetence 18 years later in (Caldwell, 2018), brings absolute clarity to the founding fathers inclusion of the separation of powers. The Constitution of the U.S. assigns the duties of crafting our laws to the legislative branch. Period. Appeals courts judges render decisions on whom is eligible for the death penalty. Yet, they lack solid credentials to properly interpret legislative laws, such as the Safety Act, whose focus is unequivocally on public safety, and the automobile manufacturers' role in public safety. This issue is all about the responsibilities of the legislatures and the President's, law-making production and approval processes. The 11th circuit court

handed automobile manufacturers a (get-out-of-jail-free card). To my understanding no other manufacturer in the United States enjoys this perk. What made this manufacturing industry the recipient of a government perk that permits the industry to roll out unsafe vehicles annually, while eluding federal government accountability?

Dr. Keith R. Caldwell Sr. (Petitioner)
United States Army (Retired)

571 330-8270

In closing, the automobile accident that is described in this Petition for Writ of Certiorari, occurred on October 16, 2016. I have entered the sixth year in search of accountability. When I pursued this lawsuit I had expected minimal interference from the defendants, and the federal courts. However, I was introduce to an incompetent and corrupt decision, in regards to the 11th circuit court of appeals case (Ayres v. General Motors, et. al, 2000). The appeals court panel sufficiently demonstrated that our federal court system is broken. The appeals court panel certified a change to the congressional legislation titled Safety Act, the judicial law change destroyed the purpose of the legislation. In the Ayres, 2000 appeals court case, the 11th circuit court without logic or good-thought, ordered that the public is stripped of the right to individual action in regards to the Safety Act. In the judicial-law rendition, the general public would no longer be able to file a lawsuit against any automobile manufacturer, which cites the Safety Act, as the primary justification in a civil lawsuit. This head-scratching judicial revision law applies to vehicular accident lawsuits that include: death, maim, hospitalization, injuries, hurt, medically restrained, life support cases, etc. The court's justification assumes that the Congress of the United States, had intended to include this stipulation (no individual right to action) when the legislation was crafted, and then voted on, by 535-members of congress that the public had elected.

Despite the fact that the 11th circuit court decision has been functioning for 18-years; no entity of the judicial branch and the legislative branch has bothered to re-think the incompetence in the judicial thought process, surrounding the 11th circuit court's decision in November, 2000. Does the 11th circuit decision makes sense? **No!** Is the public safer due to the court's revised version of the new Safety Act, effective in 2000? **No!** Is America safer by the judicial-law edict which provides unearned perks to automobile manufacturers? ***No! The reality is that two entities profit from the 11th circuit court decision: 1. the federal court system benefits by discharging lawsuits citing their version of the revised Safety Act legislation relevant to automobile/trucks, etc. Less court cases to adjudicate, lower caseloads in court despite barring the public from exercising our due process rights relevant to the 5th 14th Amendments to the constitution. 2. The automobile manufacturers benefit; less lawsuits keep their cash registers running. Manufacturers can continue to field vehicles without safety equipment thereby cost saving$ and thoughtless decision-making that have safety implications. More deaths and injuries on the public highways.***

The issue of public safety, created by the 11th circuit court of appeals impact all of the public. The legislatures must fix the Safety Act, or, the Supreme Court of the United States must take charge, before the impact of the ridiculous 11th circuit court change consumes the public. Please fix this issue now.

In regards to what I consider the most appropriate award justification for the losses, anguish and punitive damages, physical, mental health, and emotional strain over the past five years, the petitioner will consider the monetary award as settled in the amount of $4,500,000 and $6,000,000. The SCOTUS is free to set the monetary award within this range.

KEITH R. CALDWELL, SR.
1162 Warfield Blvd
Clarksville, Tennessee 37043
571 330-8270

DATE: October 21, 2021

Appendix:

I	Order to dismiss: June 9, 2021.
II	Order to dismiss: October 2020.
III	Ayres vs. General Motors, LLC., et. al.
IV	Newsletter G.M.'s attorney in the Ayres, 2000 court case. (The attorney acknowledges that the 11th Circuit Court had (in their decision) had created *"new"* law relevant to the court's change to the Safety Act, which congress had written into law. This is not the function of the courts.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

June 08, 2021

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 20-10142-AA
Case Style: Keith Caldwell v. U.S. Dept. of Transportation, et al
District Court Docket No: 8:18-cv-02525-MSS-SPF

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: T. L. Searcy, AA/lt
Phone #: (404) 335-6180

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-10142-AA

KEITH ROBERT CALDWELL,

Plaintiff - Appellant,

versus

U.S. DEPARTMENT OF TRANSPORTATION,
U.S. ATTORNEY GENERAL,
U.S. ATTORNEY'S OFFICE,

Defendants - Appellees,

DODGE CHRYSLER GROUP,
SERGIO MARCHIONNE,
FCA US LLC,

Defendants.

Appeal from the United States District Court
for the Middle District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: JILL PRYOR, GRANT and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

ORD-42

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

June 16, 2021

Clerk - Middle District of Florida
U.S. District Court
801 N FLORIDA AVE
TAMPA, FL 33602-3849

Appeal Number: 20-10142-AA
Case Style: Keith Caldwell v. U.S. Dept. of Transportation, et al
District Court Docket No: 8:18-cv-02525-MSS-SPF

A copy of this letter, and the judgment form if noted above, but not a copy of the court's decision, is also being forwarded to counsel and pro se parties. A copy of the court's decision was previously forwarded to counsel and pro se parties on the date it was issued.

The enclosed copy of the judgment is hereby issued as mandate of the court. The court's opinion was previously provided on the date of issuance.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Lois Tunstall
Phone #: (404) 335-6191

Enclosure(s)

MDT-1 Letter Issuing Mandate

UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 20-10142

District Court Docket No.
8:18-cv-02525-MSS-SPF

KEITH ROBERT CALDWELL,

Plaintiff - Appellant,

versus

U.S. DEPARTMENT OF TRANSPORTATION,
U.S. ATTORNEY GENERAL,
U.S. ATTORNEY'S OFFICE,

Defendants - Appellees,

DODGE CHRYSLER GROUP,
SERGIO MARCHIONNE,
FCA US LLC,

Defendants.

Appeal from the United States District Court for the
Middle District of Florida

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: March 01, 2021
For the Court: DAVID J. SMITH, Clerk of Court
By: Jeff R. Patch

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-10142
Non-Argument Calendar

D.C. Docket No. 8:18-cv-02525-MSS-SPF

KEITH ROBERT CALDWELL Sr.,

Plaintiff-Appellant,

versus

U.S. DEPARTMENT OF TRANSPORTATION,
U.S. ATTORNEY GENERAL,
U.S. ATTORNEY'S OFFICE,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(March 1, 2021)

Before JILL PRYOR, GRANT and ANDERSON, Circuit Judges.

PER CURIAM:

Keith R. Caldwell Sr., *pro se*, appeals the district court's order dismissing for failure to state a claim his amended complaint, which alleged, as relevant here, violations of the National Traffic and Motor Vehicle Safety Act ("Safety Act"), 49 U.S.C. § 30118 *et seq*. The district court dismissed the claim after concluding that, under this Court's precedent, the Safety Act provides no private right of action. After careful review, we affirm.

I. BACKGROUND

The basis of this action is a 2016 car crash in which Caldwell sustained serious injuries.[1] The collision occurred when the brakes in Caldwell's 2013 Dodge Durango failed, causing his car to ram into the car in front of him, which was slowing for a red light. After the collision, Caldwell learned that his Dodge Durango had been recalled for a brake defect. He contacted Dodge, who installed a brake booster in his car but determined that the missing booster did not cause the collision.

[1] When reviewing a district court's grant of a motion to dismiss for failure to state a claim, we accept as true the well-pled allegations in the complaint. *Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003). We thus recite the facts as Caldwell alleged them.

Caldwell alleged that various entities of the United States government were liable under the Safety Act for the collision.[2] He claimed that the government was liable under the Safety Act for injuries he suffered in the collision because its failure to "enforce[] [the] rules and laws on the books embolden[ed] the automobile corporations to let profits and timing dictate the release of new vehicles on the road." Doc. 1 at 18.[3] The government moved to dismiss the complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), arguing, among other things, that the Safety Act provides no private right of action. The district court dismissed the complaint with leave to amend. It agreed with the government that the Safety Act provides no private right of action under this Court's precedent. *See Ayres v. Gen. Motors Corp.*, 234 F.3d 514, 522–23 (11th Cir. 2000).[4]

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[2] In his filings, Caldwell invoked a number of provisions of the United States Code and a provision of the Code of Federal Regulations related to the nation's federal traffic safety scheme, including 49 U.S.C. §§ 301, 30118, 30120 and 49 C.F.R. § 393.48. On appeal, he does not clarify whether each of these invocations was intended to assert a distinct claim; instead, he assumes that they constitute a single claim under the "Safety Act." Following Caldwell's lead, in this opinion we assume he intended to bring a single claim under the Safety Act against each defendant.

[3] "Doc." numbers refer to the district court's docket entries.

[4] In his initial complaint, Caldwell also named Dodge Chrysler Group and Sergio Marchionne as defendants. After he failed to properly serve Dodge Chrysler Group and Marchionne, the district court dismissed them from the action. Caldwell has raised no argument on appeal challenging the dismissal of his claims against these defendants; he has therefore abandoned any argument to that effect. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008).

Caldwell filed an amended complaint in which he reaffirmed the allegations made in his initial complaint and made untethered references to the Fourteenth and Fifteenth Amendments to the United States Constitution. The government moved to dismiss for failure to state a claim. It again argued that Caldwell's Safety Act claim failed for want of a private right of action. And it argued that Caldwell failed to plead facts supporting a theory of liability under the Fourteenth or Fifteenth Amendments. The district court granted the motion, dismissing Caldwell's amended complaint with prejudice.[5] This is Caldwell's appeal.

II. STANDARD OF REVIEW

This Court reviews *de novo* a district court order dismissing a complaint under Rule 12(b)(6) for failure to state claim, accepting all allegations in the complaint as true and construing them in the light most favorable to the plaintiff. *Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003). We also review *de novo*

[5] The district court construed Caldwell's references to the Fourteenth and Fifteenth Amendments as allegations of constitutional violations and ruled that those allegations failed to state a claim for relief. It reasoned that Caldwell alleged no facts suggesting that state action deprived him of a constitutionally protected interest under the Fourteenth Amendment or of his right to vote under the Fifteenth Amendment. Although Caldwell's brief on appeal is sprinkled with constitutional references, they all appear to relate to his Safety Act claim. Thus, Caldwell has not raised on appeal—and has therefore abandoned—any argument that the district court erred in dismissing his constitutional allegations. *See Timson*, 518 F.3d at 874 ("While we read briefs filed by *pro se* litigants liberally, issues not briefed on appeal by a *pro se* litigant are deemed abandoned.") (internal citation omitted). But even if Caldwell had not waived the argument, for the reasons explained by the district court, Caldwell's references to the Fourteenth and Fifteenth Amendments in his amended complaint failed to allege violations of his constitutional rights.

"whether a statute creates by implication a private right of action." *Love v. Delta Air Lines*, 310 F.3d 1347, 1351 (11th Cir. 2002). We liberally construe *pro se* pleadings. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008).

III. DISCUSSION

The sole issue that Caldwell raises on appeal is whether the district court erred in concluding that his Safety Act claim failed because our decision in *Ayres* established that there is no private right of action under the Act. He argues that the district court's reliance on *Ayres* was erroneous because (1) *Ayres* was wrongly decided and (2) *Ayres* does not extend to this case because his complained-of injuries are more serious than the injuries suffered by the *Ayres* plaintiffs. We disagree with both arguments.[6]

First, Caldwell argues that we should reverse the district court because *Ayres*, which concluded that "the Safety Act confers no private [right] of action," was wrongly decided and should be overruled. 234 F.3d at 522. We reject this argument because we, as a panel, cannot overrule another panel's decision. "Under the well-established prior panel precedent rule of this Circuit, the holding

[6] On appeal, the government argues that the district court lacked subject matter jurisdiction over Caldwell's Safety Act claim because the government has not waived sovereign immunity for claims under the Safety Act. We disagree. Caldwell's Safety Act claim sought injunctive relief. Under the Administrative Procedures Act, 5 U.S.C. § 702, the government has waived sovereign immunity as to claims for injunctive relief. *See Elend v. Basham*, 471 F.3d 1199, 1203 (11th Cir. 2006) (explaining that § 702 removes governmental immunity from suits seeking "injunctive relief against federal agencies or employees acting in their official capacity").

of the first panel to address an issue is the law of this Circuit, thereby binding all subsequent panels unless and until the first panel's holding is overruled by the Court sitting en banc or by the Supreme Court." *Smith v. GTE Corp.*, 236 F.3d 1292, 1300 n.8 (11th Cir. 2001). *Ayres* has been overruled neither by this Court sitting en banc nor the Supreme Court. Thus, even if we agreed with Caldwell that *Ayres* was wrongly decided, we would have no power to overrule it and reverse the district court on that ground.

Second, Caldwell argues that *Ayres*'s conclusion that the Safety Act provides no private right of action does not bar his suit because he alleged more serious injuries than the plaintiffs alleged in *Ayres*, where plaintiffs sought compensation for the "dimin[ished] value of their cars and the expense of assorted repairs." *Ayres*, 234 F.3d at 516. We reject this argument, too. Our conclusion in *Ayres* that "the Safety Act confers no private [right] of action" was a conclusion of law based on our interpretation of the Act. *Id.* at 522–23; *see also Alexander v. Sandoval*, 532 U.S. 275, 286–87 (2001) (explaining that the question whether Congress created a private right of action in a statute is one of "[s]tatutory intent"). Thus, none of the factual differences between this case and *Ayres* that Caldwell points out bears on whether the Safety Act provides a private right of action.

IV. CONCLUSION

For the foregoing reasons, we affirm the district court's dismissal of this action.

AFFIRMED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

KEITH R. CALDWELL,

Plaintiff,

v. **Case No: 8:18-cv-2525-T-35SPF**

DODGE CHRYSLER GROUP, SERGIO MARCHIONNE, U.S. DEPARTMENT OF TRANSPORTATION, U.S. ATTORNEY GENERAL, and U.S. ATTORNEY'S OFFICE,

Defendants.

ORDER

THIS CAUSE comes before the Court for consideration of United States' Motion to Dismiss Complaint and Addendum filed by Defendants U.S. Department of Transportation, U.S. Attorney General and U.S. Attorney's Office's, (Dkt. 28), and Plaintiff's "Motion to Deny the United States Motion to Dismiss Complaint and Addendum," which the Court construes as Plaintiff's Response in opposition to the Motion to Dismiss. (Dkt. 33) Upon consideration of all relevant filings, case law, and being otherwise fully advised, the Court **GRANTS** United States' Motion to Dismiss Complaint and Addendum. (Dkt. 28)

I. BACKGROUND

On October 15, 2018, Plaintiff commenced this action pursuant to "Title 49 of the United States Code, Chapter 301, [the] Federal Motor Vehicle Safety Standards (FMVSS) and Regulations." (Dkt.1 at 2) On July 23, 2019, this Court dismissed the Complaint,

granting FCA US LLC's Notice of Limited Appearance,[1] filed on behalf of Defendants Dodge Chrysler Group and Sergio Marchionne, and Motion to Quash or in the Alternative Motion to Dismiss for Insufficient Process, (Dkt. 16), as well as Defendants U.S. Department of Transportation, U.S. Attorney General and U.S. Attorney's Office's Motion to Dismiss Complaint. (Dkt. 17) The Court's Order provided a twenty-one-day window for Plaintiff to file an Amended Complaint. (Dkt. 21)

On August 30, 2019, Plaintiff filed an "Addendum to the Complaint," which the Court construes as an Amended Complaint. (Dkt. 24) Therein, Plaintiff maintains that he "stands by his Complaint" and asserts the same factual allegations, legal arguments, and disjointed ramblings as those contained in his initial Complaint and addressed in this Court's July 23, 2019 Order. (Dkt. 21 at 10–11) The Amended Complaint also includes new references to the Fourteenth Amendment, which provides for due process and equal protection, and the Fifteenth Amendment, which protects the right of citizens to vote. (Dkt. 24 at 36–37)

On September 23, 2019, Defendants U.S. Department of Transportation, U.S. Attorney General and U.S. Attorney's Office (hereinafter, "the United States Defendants") filed the instant Motion to Dismiss. (Dkt. 28) Therein, the United States Defendants argue that Plaintiff has again failed to state a claim because he "seeks to enforce the regulations prescribed under the National Traffic and Motor Vehicle Safety Act of 1966 (the "Safety

[1] FCA US LLC was not named as a defendant in this action but filed a Notice of Limited Appearance explaining its relation to Defendants Dodge Chrysler Group and Sergio Marchionne. (Dkt. 16) Dodge and Chrysler are two distinctive vehicle brands designed, manufactured and distributed by FCA, however, "Dodge Chrysler Group" is a "non-existent entity." (Id. at 1–2) Defendant Sergio Marchionne "was the CEO of FCA US until July 2018 when he became unable to work and ultimately died while recovering from surgery." (Id. at 4) The Parties appear to agree that Defendant Marchionne has been deceased since July 2018. (Dkt. 15 at 7; Dkt. 16 at 4)

Act"), but the Safety Act provides for no private right of action." (Id. at 1) The Motion to Dismiss further asserts that the Amended Complaint does not allege any constitutionally protected interest or action by any state, and therefore, fails to state a claim under the Fourteenth Amendment, and similarly fails to state a claim under the Fifteenth Amendment because voting rights are not at issue in this case. (Id. at 9–10) On October 22, 2019, Plaintiff filed his Response in opposition to the Motion. (Dkt. 33)

II. LEGAL STANDARD

The threshold for surviving a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) is a low one. Quality Foods de Centro Am., S.A. v. Latin Am. Agribusiness Dev. Corp., S.A., et al., 711 F.2d 989, 995 (11th Cir. 1983). A plaintiff must plead only enough facts to state a claim to relief that is plausible on its face. Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1968-69 (2007) (abrogating the "no set of facts" standard for evaluating a motion to dismiss established in Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). Although a complaint challenged by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff is still obligated to provide the "grounds" for his entitlement to relief, and "a formulaic recitation of the elements of a cause of action will not do." Berry v. Budget Rent A Car Sys., Inc., 497 F. Supp. 2d 1361, 1364 (S.D. Fla. 2007) (quoting Twombly, 127 S.Ct. at 1964-65). In evaluating the sufficiency of a complaint in light of a motion to dismiss, the well pleaded facts must be accepted as true and construed in the light most favorable to the plaintiff. Quality Foods, 711 F.2d at 994–95. However, the court should not assume that the plaintiff can prove facts that were not alleged. Id. Thus, dismissal is warranted if, assuming the truth of the factual allegations of the plaintiff's complaint, there is a dispositive legal issue which

precludes relief. Neitzke v. Williams, 490 U.S. 319, 326 (1989).

III. DISCUSSION

A. National Traffic and Motor Vehicle Safety Act

The United States Defendants contend that Plaintiff fails to state a claim upon which relief may be granted. (Dkt. 28 at 1) Specifically, the Motion asserts that the Amended Complaint has failed to state a claim because Plaintiff seeks to enforce the regulations prescribed under the Safety Act, however, the Safety Act provides for no private right of action. (Id. at 1)

Federal courts are courts of limited subject matter jurisdiction. Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994) (citations omitted). Federal district courts have original jurisdiction "of all civil actions arising under the Constitution, law, or treaties of the United States." 28 U.S.C. § 1331.[2] The Amended Complaint, like the initial Complaint, cites to 49 USC § 301, the Federal Motor Vehicle Safety Standards. (Dkt. 24) As the Court established in its July 23, 2019 Order, the Safety Act does not give rise to any private right of action for individuals. (Dkt. 21)

The Eleventh Circuit considered whether an individual may maintain a private right of action under the Safety Act in Ayres v. General Motors Corp., 234 F.3d 514 (11th Cir. 2000). (Dkt. 17 at 8) In Ayres, three plaintiffs who had purchased General Motors automobiles, all of which contained electronic control modules manufactured by a third-party company, Delco, claimed that the modules were defective. Ayres, 234 F.3d at 514.

[2] Federal district courts also have original jurisdiction over civil actions brought in diversity in which the matter in controversy exceeds the sum or value of $75,000.00, exclusive of interest and costs, and is between citizens of different States. 28 U.S.C. § 1332(a)(1). Here, Plaintiff does not allege a sufficient basis for diversity jurisdiction.

Plaintiffs asserted, inter alia, that General Motors and Delco knew of the defect but failed to disclose it as required by the Safety Act and Georgia's RICO statute. Id. at 516, 521. The Eleventh Circuit held that "the Safety Act confers no private cause of action to enforce its notification requirements." Id. at 523.

In considering whether the Safety Act implied a private right of action, the Eleventh Circuit observed that the Safety Act "establishes its own extensive array of administrative remedies for a violation of its notification obligations." Ayres, 234 F.3d at 522. Indeed, the Safety Act provides that any interested person can file a petition with the Secretary requesting the Secretary to begin a proceeding to decide whether to issue an order requiring a manufacturer to give notice under 49 U.S.C. § 30118(e). See id. Additionally, the Safety Act specifies civil penalties that shall be paid to the United States Government—not private individual citizens—for violations. Id. (citing 49 U.S.C. §§ 30121(a), (b); 49 U.S.C. § 30165(a)). Considering the extensive administrative remedies and governmental suits contemplated by the Safety Act, the Eleventh Circuit "readily conclude[d] that Congress did not intend to create a private cause of action to enforce the notification requirements found in the Safety Act." Id. at 524.

In the Amended Complaint, Plaintiff acknowledges the Eleventh Circuit precedent and asserts several arguments challenging the decision of the Ayers court. (Dkt. 33) Nevertheless, Plaintiff fails to cite any case law in support of his contention that the Safety Act allows for a private right of action. Consequently, Plaintiff has failed to establish any basis for federal jurisdiction under the Safety Act, and therefore, fails to state a claim upon which relief may be granted under 49 USC § 301.

B. Fourteenth and Fifteenth Amendments of the U.S. Constitution

The Motion to Dismiss also correctly asserts that the Amended Complaint fails to state a claim under the Fourteenth and Fifteenth Amendments (Dkt. 28 at 9–10)

The Fourteenth Amendment guarantees that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law." See U.S. Const, amend. XIV, § 1. "The Due Process Clause provides two different kinds of constitutional protections: procedural due process and substantive due process." Maddox v. Stephens, 727 F.3d 1109, 1118 (11th Cir. 2013); Schwindt v. Hernando County, No. 8:13-cv-809-17EAJ, 2015 WL 4523096 at *4 (M.D. Fla. July 16, 2015) (explaining Fourteenth Amendment due process claims). To state a procedural due process violation, Plaintiff must allege: "(1) a deprivation of a constitutionally-protected liberty or property interest; (2) state action; and (3) constitutionally-inadequate process." Am. Fed'n of Labor & Cong. of Indus. Orgs. v. City of Miami, 637 F.3d 1178, 1186 (11th Cir. 2011) (internal quotation marks omitted). Substantive due process rights are "fundamental," or in other words "rights that are implicit in the concept of ordered liberty." McKinney v. Pate, 20 F.3d 1550, 1556 (11th Cir. 1994) (internal quotation marks omitted). The Amended Complaint does not allege any constitutionally protected interest or action by any state, nor does it assert facts sufficient to conclude that Plaintiff was denied due process.

The Fifteenth Amendment provides that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." See U.S. Const. amend. XV. Notably, voting rights are not at issue in this case, and therefore, the Fifteenth Amendment cannot provide a basis for relief. See Osburn v. Cox, 369 F.3d 1283, 1288 (11th Cir. 2004)

(affirming dismissal of Fifteenth Amendment claim where plaintiffs did not allege denial of fundamental voting rights).

IV. CONCLUSION

Upon consideration of the foregoing, it is hereby **ORDERED** as follows:

1. United States' Motion to Dismiss Complaint and Addendum, (Dkt. 28), is **GRANTED**.
2. Plaintiff's "Motion to Deny the United States Motion to Dismiss Complaint and Addendum," which the Court construes as Plaintiff's Response in opposition to the Motion to Dismiss, (Dkt. 33), is **DENIED**.
3. Plaintiff's Amended Complaint, (Dkt. 24), is **DISMISSED WITH PREJUDICE**.
4. The **CLERK** is directed to **TERMINATE** any pending motions and **CLOSE** this case.

DONE and **ORDERED** in Tampa, Florida, this 29th day of October, 2019.

MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Any Unrepresented Person

AYRES v. GENERAL MOTORS CORPORATION

United States Court of Appeals,Eleventh Circuit.

Lisa M. AYRES, on behalf of herself and other persons similarly situated, Ronald L. Swann, Administrator of the Estate of Richard W. Swann, et al., Plaintiffs-Appellees, v. GENERAL MOTORS CORPORATION and Delco Electronics Corporation, Defendants-Appellants.

No. 98-8696.

Before ANDERSON, Chief Judge, and TJOFLAT and FAY, Circuit Judges. David M. Monde,Jones, Day, Reavis & Pogue, Atlanta, GA, for Defendants-Appellants. James E. Carter, The Carter Firm, Madison, GA, Barry A. Ragsdale, Ivey & Ragsdale, Birmingham, AL, for Plaintiffs-Appellees.

This is an interlocutory appeal by Defendants-Appellees General Motors Corporation ("General Motors") and Delco Electronics Corporation ("Delco") of the district court's denial of their motion for summary judgment. The district court certified the appeal as one involving a question of law as to which there is substantial ground for difference of opinion and with respect to which an immediate appeal from the order may materially advance the ultimate termination of this litigation; thus, we have appellate jurisdiction under 28 U.S.C. § 1292(b). For the reasons stated below, we reverse.

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right or immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another. A genuine and present controversy, not merely a possible or conjectural one, must exist with reference thereto, and the controversy must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal. Indeed, the complaint itself will not avail as a basis of jurisdiction in so far as it goes beyond a statement of the plaintiff's cause of action and anticipates or replies to a probable defense.

Id. at 112-13, 57 S.Ct. at 97-98. Although a case may arise under federal law "where the vindication of a right under state law necessarily turned on some construction of federal law," Franchise Tax Board v. Construction Laborers Vacation Trust, 463 U.S. 1, 9, 103 S.Ct. 2841, 2846, 77 L.Ed.2d 420 (1983), "the mere presence of a federal issue in a state cause of action does not automatically confer federal-question jurisdiction." Merrell Dow Pharmaceuticals, Inc. v. Thompson, 478 U.S. 804, 813, 106 S.Ct. 3229, 3234, 92 L.Ed.2d 650 (1986).

Such federal-question jurisdiction is available here because, as this opinion makes clear below, a violation of the federal mail and wire fraud statutes is an essential element of the Plaintiffs' cause of action, the proof of which involves resolution of a substantial, disputed question of federal law.[6] Again as made clear below, resolution of this case depends entirely on interpretation of the federal mail and wire fraud statutes and their interaction with the Safety Act. See Jairath v. Dyer, 154 F.3d 1280, 1282 (11th Cir.1998) ("[F]ederal-question jurisdiction may also be available if a substantial, disputed question of federal law is a necessary element of a state cause of action."); Ormet Corp. v. Ohio Power Co., 98 F.3d 799, 806 (4th Cir.1996) (recognizing that, even though a cause of action may be created by state law, it may involve the "resolution of a federal question sufficiently substantial to arise under federal law within the meaning of 28 U.S.C. § 1331"). Plaintiffs' Fourth Amended and Recast Complaint claims that "[t]he defendants have repeatedly used the mails and wires to perpetrate their scheme of fraudulent concealment of the defects with engine control modules" and bases the Georgia RICO claim on Defendants' conspiracy to "deprive Plaintiffs of money by multiple illegal acts which involved use of the mails and wires and which constitute a pattern of racketeering activity in violation of the Georgia RICO Act."[7] Examination of the Georgia RICO statute, see infra n. 13, and Plaintiffs' argument makes it abundantly clear that this part of their complaint refers to the federal right, enforceable through the federal RICO statute, to be free from violations of the federal mail and wire fraud statutes.[8] Thus, establishing a violation of the federal mail and wire fraud statutes is an essential element of Plaintiffs' cause of action.[9] We note that the instant situation in which Plaintiffs must prove federal crimes involving a violation of the federal mail and wire fraud statutes to satisfy the necessary predicate acts of their Georgia RICO cause of action would seem to fall squarely within the language of Gully and Franchise Tax Board, in which the Supreme Court indicated that it was well established that federal question jurisdiction exists where a plaintiff's cause of action has as an essential element the existence of a right under federal law which will be supported by a construction of the federal law concluding that the federal crime is established, but defeated by another construction concluding the opposite. However, to find federal question jurisdiction in this case, we need not go so far as to hold that every state RICO cause of action which depends upon proving, as necessary predicate acts, a violation of the federal mail and wire fraud statutes establishes federal question jurisdiction.[10] The particular controversy in this case may very well make this case one of those exceptional cases requiring that we decide "a federal question substantial enough to confer federal question jurisdiction." City of Huntsville, 24 F.3d at 174.

As indicated below, this case requires that we decide whether or not a breach of the disclosure duty under the Safety Act constitutes a federal mail and wire fraud crime. We conclude that this federal question constitutes a federal question which may be substantial enough to confer federal question jurisdiction. The magnitude of the federal question at issue in this case is at least comparable to that of other federal questions which courts have found sufficient to confer federal question jurisdiction. See Ormet, 98 F.3d at 807 (holding that resolution of a contractual dispute requiring the interpretation and application of the Clean Air Act was sufficiently substantial to justify invocation of federal question jurisdiction given the important federal interest in the Acid Rain Program); Milan Express Co., Inc. v. Western Sur. Co., 886 F.2d 783, 787 (6th Cir.1989) (holding that plaintiffs' claims, in which they sought proceeds of surety bonds prescribed by the Interstate Commerce Commission, should be heard in a federal forum due to the federal interest in the regulation of interstate commerce); West 14th St. Commercial Corp. v. 5 West 14th Owners Corp., 815 F.2d 188, 196 (2nd Cir.1987) (concluding that the federal element in plaintiffs' state cause of action was sufficiently substantial to confer federal question jurisdiction because, "[i]n construing the Condominium Relief Act in a state cause of action, the federal issue is decisive because upon that Act's construction the vindication of rights and definition of relationships created by federal law depends"). The federal question at issue in this case, whether the alleged violations of the Safety Act constitute federal mail and wire fraud crimes, is a matter of considerable magnitude and substantial federal interest.

We find federal question jurisdiction in this case because the case involves both (1) the necessity for Plaintiffs to prove, as an essential element of their state law cause of action, the existence of federal mail and wire fraud crimes as predicate acts, which crimes would be enforceable in a federal civil RICO cause of action; and (2) the fact that proof of the alleged federal mail and wire fraud crimes involves a very substantial federal question.[11]

For the foregoing reasons, we conclude that the district court had subject matter jurisdiction, and we decline to order a remand to state court. Accordingly, Plaintiffs' motion to dismiss is denied.[12]

We now turn to the merits of this case. The district court's denial of summary judgment is reviewed de novo, with all facts and reasonable inferences therefrom reviewed in the light most favorable to the nonmoving parties. See Carnival Brand Seafood Co. v. Carnival Brands, Inc., 187 F.3d 1307, 1309 (11th Cir.1999). Summary judgment was due to be granted only if the forecast of evidence before the district court showed that there was no genuine issue as to any material fact and that the moving parties, i.e., General Motors and Delco, were entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c).

As a simple matter of statutory incorporation, federal mail and wire fraud are predicate acts of racketeering under the Georgia civil RICO statute, as they are under the federal RICO statute.[13] Therefore, the critical question is whether the Defendants have violated the mail and wire fraud statutes, 18 U.S.C. §§ 1341, 1343.[14] We believe they have not. In Pelletier v. Zweifel, 921 F.2d 1465, 1498 (11th Cir.1991), this Court explained that "[m]ail or wire fraud occurs when a person (1) intentionally participates in a scheme to defraud another of money or property and (2) uses the mails or wires in furtherance of that scheme." It is undisputed that, if such a scheme exists here, the Defendants used the mails and wires in furtherance of that scheme. Therefore, the Plaintiffs must show a scheme to defraud. "Under the mail and wire fraud statutes, a plaintiff only can show a scheme to defraud if he proves that some type of deceptive conduct occurred." Id. at 1500.

As noted, the Plaintiffs have identified no affirmative misrepresentation on the part of the Defendants. However, Plaintiffs argue that the Defendants' failure to disclose the information they possessed about the ECM did violate the mail

and wire fraud statutes. Plaintiffs rely primarily upon the theory that nondisclosure of material information can constitute a violation of the mail and wire fraud statutes where a defendant has a duty to disclose. Ample case law supports Plaintiffs' legal theory. See, e.g., United States v. Brown, 79 F.3d 1550, 1557 (11th Cir.1996) (holding that nondisclosure can violate the federal fraud statutes where a special relationship of trust, such as a fiduciary relationship, requires disclosure of material facts); United States v. Waymer, 55 F.3d 564, 571 (11th Cir.1995) ("A defendant's breach of a fiduciary duty may be a predicate for a violation of the mail fraud statute where the breach entails the violation of a duty to disclose material information. An affirmative duty to disclose need not be explicitly imposed; it may instead be implicit in the relationship between the parties.").[15]

Applying the foregoing theory to the facts of this case, the Plaintiffs argue that the Defendants had a duty to disclose the ECM defect under the Safety Act, and that their failure to do so violated the mail and wire fraud statutes, thus satisfying the predicate acts of racketeering under Georgia's civil RICO statute. The viability of this argument rests upon two assumptions: first, that the Defendants did have a duty under the Safety Act to disclose the information possessed by the Defendants with respect to the ECM, and second, assuming such a duty, that a breach of this duty would constitute mail or wire fraud. We assume arguendo that both General Motors and Delco did have such a duty under the Safety Act.[16] Thus, the crucial issue before us is whether a breach of such duty to disclose would constitute mail or wire fraud. For the reasons that follow, we conclude that the Safety Act was not meant to create the kind of duty, a breach of which would create criminal liability or civil liability under RICO statutes.

The Safety Act establishes its own extensive array of administrative remedies for a violation of its notification obligations. For example, the Secretary of Transportation can determine that a defect exists and order the manufacturer to notify and/or "take specified action" to meet the notification requirements. 49 U.S.C. § 30118(b), (e). The Safety Act provides for hearings upon a motion of the Secretary or any interested person at which "[a]ny interested person may make written and oral presentations of information, views, and arguments on whether the manufacturer has reasonably met the notification requirements." 49 U.S.C. § 30118(e). Any interested person can also file a petition with the Secretary of Transportation requesting the Secretary to begin a proceeding to decide whether to issue an order requiring a manufacturer to give notice under § 30118. See 49 U.S.C. § 30162(a). Furthermore, the Attorney General is authorized to bring a civil action to enforce the Safety Act and the notification obligations. See 49 U.S.C. §§ 30121(b), 30163. A person found in violation of § 30118's notification requirement in this civil action is liable to the United States Government for a civil penalty of not more than $1000 for each violation and not more than $800,000 for a related series of violations. See 49 U.S.C. §§ 30121(a), (b), 30165(a).[17] Lastly, the Safety Act does not make violation of the notification requirements criminal.[18] In light of this extensive administrative scheme, we think it clear that Congress did not intend to equate a violation of the Safety Act's notification requirements in and of itself with the felony of mail or wire fraud. Moreover, given the limits on the civil penalties, the absence of a private right of action, and the option of private parties to petition for administrative action, it is also clear that Congress did not intend for a violation of the Safety Act's notification requirements to be the basis for a private civil RICO action, which would permit unlimited, treble damages.

The foregoing discussion also makes it clear that the Safety Act confers no private cause of action to enforce its notification requirements.[19] The question of whether a private cause of action is conferred is essentially one of interpreting Congressional intent. See California v. Sierra Club, 451 U.S. 287, 293, 101 S.Ct. 1775, 1779, 68 L.Ed.2d 101 (1981) ("Cases subsequent to Cort have explained that the ultimate issue is whether Congress intended to create a private cause of action."); Till v. Unifirst Federal Savings & Loan Ass'n, 653 F.2d 152, 157 (5th Cir. Unit A Aug.1981). The inquiry is guided by the Cort four-prong test.[20] Examination of the Safety Act in light of both the second and third prongs of this test unequivocally indicates that Congress did not intend to create a private cause of action here. With respect to the second prong, nothing in the language of the Safety Act or its legislative history supports an inference that Congress intended to create a private cause of action for a violation of the notification requirements. To the contrary the extensive array of administrative remedies, including participation there by "interested parties,"and the specific provision authorizing the Attorney General to bring a civil enforcement action create a strong inference that Congress did not intend to create a private right of action. Likewise the express provision of a private cause of action for a distributor or dealer to enforce the obligations of a manufacturer or distributor related to safety defects or safety standard violations found in a vehicle prior to its sale to a consumer, as provided by 49 U.S.C. § 30116,[21] is strong evidence that Congress knew how to create a private cause of action to enforce the notification requirements and would have done so expressly if it had intended to create such a private cause of action. See Touche Ross & Co. v. Redington, 442 U.S. 560, 571, 99 S.Ct. 2479, 2488, 61 L.Ed.2d 82 (1979); Till, 653 F.2d at 160. The Plaintiffs also fail the third prong because implying a private cause of action would be inconsistent with the legislative scheme of the Safety Act. Implying such a private cause of action to enforce the notification requirements would undermine the administrative remedies.[22] See District Lodge No. 166 v. TWA Services, Inc., 731 F.2d 711, 715-16 (11th Cir.1984) (finding no private right of action in the Service Contract Act because in part " 'it would be flatly inconsistent with the express provision of a limited governmental cause of action to imply a wide-ranging private right of action as an alternative to a governmental suit' ") (quoting Miscellaneous Service Workers, Local 427 v. Philco-Ford Corp., 661 F.2d 776, 780 (9th Cir.1981)). "[W]hen an examination of one or more of the Cort factors 'unequivocally reveals congressional intent, there is no need for us to trudge through all four of the factors.' " Florida v. Seminole Tribe of Florida, 181 F.3d 1237, 1247 (11th Cir.1999) (quoting Liberty Nat'l Ins. Holding Co. v. Charter Co., 734 F.2d 545, 558 (11th Cir.1984) (internal quotation marks omitted) (quoting Merrill Lynch, Pierce, Fenner & Smith v. Curran, 456 U.S. 353, 388, 102 S.Ct. 1825, 1844, 72 L.Ed.2d 182 (1982))). Thus, we readily conclude that Congress did not intend to create a private cause of action to enforce the notification requirements found in the Safety Act. Cf. Seminole Tribe, 181 F.3d at 1247-50 (finding no implied private cause of action in the Indian Gaming Regulatory Act based on the second and third prongs of the Cort test). The only other circuit court to address this issue has concluded that there is no private cause of action under the Safety Act. See Hardy v. General Motors Corp., 518 F.2d 786, 788 (9th Cir.1975) (per curiam) ("The district court correctly ruled that Congress did not intend to create private rights of action [under the Safety Act] in favor of individual purchasers of motor vehicles when it adopted the comprehensive system of regulation to be administered by the NHTSA.").

Given the extensive array of administrative remedies for violation of the Safety Act, including specific provisions for participation by "any interested person," and given the specific provision for the civil enforcement action by the Attorney General with no mention of a corresponding private cause of action, and given the limits on the civil penalties and lack of criminal penalties, and finally given the absence of a private cause of action, we conclude that Congress did not intend for a violation of the Safety Act's notification requirement to constitute the crime of mail or wire fraud. It follows that Congress did not intend for a violation of the Safety Act to be the basis for a private civil RICO action, which would permit unlimited, trebled damages. Reaching the same conclusion in an analogous context, the D.C. Circuit in Danielsen v. Burnside-Ott Aviation Training Center, 941 F.2d 1220, 1229 (D.C.Cir.1991), affirmed the dismissal of a federal RICO claim

based on violations of the Service Contract Act ("SCA"). In Danielsen, the plaintiffs argued that the defendants' non-compliance with the contract requirements of the SCA amounted to mail fraud and that this mail fraud was the racketeering activity supporting their RICO claim. The court rejected this argument reasoning that:

The very fact that Congress enacted the SCA with its complex framework for administrative recovery suggests that Congress did not contemplate that violation of SCA constituted the criminal felony of mail fraud. [I]t would seem likely that either the statute or at least the legislative history would have indicated as much.

Id. at 1229. Likewise, in Norman v. Niagara Mohawk Power Corp., 873 F.2d 634 (2d Cir.1989), the Second Circuit rejected the plaintiffs' attempt to circumvent the extensive administrative scheme established by the Energy Reorganization Act of 1974, by pleading their claim in RICO terms. In the court's words, "[a]rtful invocation of controversial civil RICO, particularly when inadequately pleaded, cannot conceal the reality that the gravamen of the complaint herein is section 210 harassment." Id. at 637. Thus, the plaintiffs were limited to the administrative remedies created by the relevant federal act and could not use RICO to get treble damages and its other attendant benefits. See id. at 636-37. We agree with the reasoning of these courts. To permit plaintiffs to convert non-compliance with the notification requirement found in the Safety Act, a regulatory statute with its own administrative remedies, into mail and wire fraud and thereby to maintain a civil RICO action would upset the purposes and contradict the intent of the statute.[23]

Apparently foreseeing our holding that the Plaintiffs have established no duty to disclose which might constitute mail or wire fraud, the Plaintiffs assert in their brief on appeal that the absence of such a duty is not dispositive. They cite language in a number of cases to the effect that nondisclosure of material facts intending to create a false and fraudulent representation might constitute mail fraud. See United States v. O'Malley, 707 F.2d 1240, 1247 (11th Cir.1983) ("Fraud, for purposes of a mail fraud conviction, may be proved through the defendant's non-action or non-disclosure of material facts intended to create a false and fraudulent representation."); Pelletier v. Zweifel, 921 F.2d 1465, 1509 (11th Cir.1991) (citing O'Malley for the proposition that "nondisclosure of material fact with intent to create a false or fraudulent representation can constitute scheme to defraud under mail fraud statute"). However, the Plaintiffs' brief on appeal is extremely vague with respect to the application of such a theory to the facts of the instant case. They point merely to the facts that the Defendants never notified the Plaintiffs or other similar owners and that such a notification would have been costly. We cannot conclude that Plaintiffs have created a genuine issue of fact that Defendants failed to disclose material facts intending to create a false or fraudulent representation.[24]

In sum, the district court erred in concluding that the duty to notify found in the Safety Act was such that its breach constituted mail and wire fraud, and the Plaintiffs have not otherwise established that Defendants violated the mail or wire fraud statutes. Thus, the Plaintiffs have failed to establish that the Defendants committed the racketeering activity of mail and/or wire fraud and therefore they cannot succeed on their Georgia civil RICO claim. The Defendants are entitled to summary judgment on this claim. Accordingly, we reverse the district court's denial of the Defendants' motion for summary judgment with respect to the RICO claim and remand for further proceedings consistent with this opinion.

REVERSED and REMANDED.[25]

FOOTNOTES

1. Plaintiffs seek class certification representing the 4.5 million consumers with vehicles containing the defective ECM, but as of yet no class has been certified.

2. Ronald Swann, as executor of his father Richard Swann's estate, also was a plaintiff below. The Defendants state that discovery conducted after the preparation of the record for appeal conclusively shows that the vehicle purchased new by Richard Swann did not contain the defective ECM and the Plaintiffs do not name Swann in their appellate brief. However, in light of our ultimate disposition of this appeal, whether Swann's vehicle did or did not contain the ECM in question is immaterial to the resolution of this case and we therefore do not address it.

3. In addition to the Georgia civil RICO claim, the Plaintiffs brought additional state law claims for fraud and deceit and breach of warranty. The district court granted the Defendants' summary judgment motion with respect to the fraud and deceit and breach of warranty claims. This grant of summary judgment is not on appeal here.

4. The Plaintiffs assert that the Defendants engaged in a "pattern and practice of fraudulent suppression and deceit" but do not identify any misrepresentations. In light of the requirement of Fed.R.Civ.P. 9(b) that "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity," we conclude Plaintiffs' assertions mean no more than that the Defendants did not disclose the defect to the Plaintiffs or attempt to remedy the defect.

5. In Bonner v. City of Prichard, 661 F.2d 1206 (11th Cir.1981) (en banc), the Eleventh Circuit Court of Appeals adopted as binding precedent the decisions of the former Fifth Circuit issued before October 1, 1981.

6. We reject Plaintiffs' argument that, because Defendants originally based removal on diversity jurisdiction, it is too late for them to raise the issue of federal question jurisdiction on appeal due to the thirty day limitation set forth in 28 U.S.C. § 1446(b). All of the cases Plaintiffs cite in support of this argument differ substantially from the case sub judice because the district courts in those cases did not consider the merits of the case before ordering a remand due to an untimely removal. In this case, however, the district court considered the merits of the case when it granted summary judgment on certain of Plaintiffs' claims and refused to grant summary judgment on the Georgia RICO claim. Considering the interests of "finality, efficiency, and economy," the Supreme Court has held that a district court's failure to remand a case improperly removed "is not fatal to the ensuing adjudication if federal jurisdictional requirements are met at the time judgment is entered." Caterpillar Inc. v. Lewis, 519 U.S. 61, 64-75, 117 S.Ct. 467, 471-76, 136 L.Ed.2d 437 (1996). Considering these same interests, we believe that to remand this case which satisfies all federal jurisdictional requirements to state court "would impose an exorbitant cost on our dual court system, a cost incompatible with the fair and unprotracted administration of justice." Id. at 77, 117 S.Ct. at 477.

7. We are not troubled by the fact that this elaboration of the basis of the Georgia RICO claim was added by a post-removal amendment of the complaint. The complaint at the time of the removal stated the Georgia RICO cause of action without identifying the predicate acts. The subsequent amendment makes clear that, in a well-pleaded complaint, Plaintiffs' cause of action contains, as an essential element, a federal issue, i.e., whether the Defendants violated the federal mail and wire fraud statutes. See 14B Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction § 3732, at 333 (3d ed. 1998) ("[R]emoval will be held proper when the plaintiff has concealed a legitimate ground of removal by inadvertence, or artful pleading. [T]he plaintiff may be said to have engaged in 'artful pleading' in particular when he

pleads "a state cause of action the merits of which turn on an important federal question."); cf. In re Uniroyal Goodrich Tire Company, 104 F.3d 322, 324 (11th Cir.1997) ("The untimeliness of a removal is a procedural, instead of a jurisdictional, defect."). And, in any event, once the complaint was amended it could have been removed. See 28 U.S.C. § 1446(b).

8. We reject Plaintiffs's argument that Merrell Dow Pharmaceuticals Inc. v. Thompson, 478 U.S. 804, 106 S.Ct. 3229, 92 L.Ed.2d 650 (1986), precludes federal-question jurisdiction because there is no private right of action under the federal mail and wire fraud statutes. Plaintiffs are correct that Merrell Dow holds that a claim does not arise under federal law where "a complaint alleg[es] a violation of a federal statute as an element of a state cause of action, when Congress has determined that there should be no private, federal cause of action for the violation." Id. at 817, 106 S.Ct. at 3237; see id. at 812, 106 S.Ct. at 3234 ("The significance of the necessary assumption that there is no federal cause of action thus cannot be overstated."). Plaintiffs are incorrect, however, when they contend that the federal mail and wire fraud statutes do not have a private right of action. In fact, these federal statutes are enforceable through a private federal RICO action in the same manner that the Plaintiffs attempt to enforce them through a private Georgia RICO action. See 18 U.S.C. §§ 1961(1)(B), 1962, 1964(c).

9. We note that our conclusion, explained below, that the Plaintiffs fail to establish a violation of the federal mail and wire fraud statutes, in which case their Georgia RICO cause of action fails as would any federal RICO cause of action, does not deprive the court of subject matter jurisdiction. See Bell v. Hood, 327 U.S. 678, 682, 66 S.Ct. 773, 776, 90 L.Ed. 939 (1946) ("Jurisdiction, therefore, is not defeated . by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover. For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction."); M.H.D. v. Westminster Schools, 172 F.3d 797, 802 n. 12 (11th Cir.1999)

10. Thus, we do not so hold.

11. Because we rely on both of the facts mentioned in the text, we need not in this case decide whether either, by itself, is sufficient to confer federal question jurisdiction.

12. We recognize that there are district court cases which suggest that a complaint asserting violations of the federal mail and wire fraud statutes as predicate acts to Georgia's RICO statute is not sufficiently substantial to confer federal question jurisdiction. See Graham Commercial Realty, Inc. v. Shamsi, 75 F.Supp.2d 1371 (N.D.Ga.1998); Patterman v. Travelers, Inc., 11 F.Supp.2d 1382 (S.D.Ga.1997). Nothing in those cases suggests a federal question of the magnitude involved here, and thus they are distinguishable. We express no opinion as to their correctness. See supra n. 10 and accompanying text.

13. In particular, O.C.G.A. § 16-4-3(9)(A) of the Georgia RICO statute states that " '[r]acketeering activity' means to commit . any crime which is chargeable by indictment under the following laws of this state: . (xxix) Any conduct defined as 'racketeering activity' under 18 U.S.C. Section 1961(1)(A), (B), (C), and (D)," and 18 U.S.C. § 1961(1)(B), part of the federal RICO statute, states that " 'racketeering activity' means any act which is indictable under . [18 U.S.C.] section 1341 (relating to mail fraud), [and] section 1343 (relating to wire fraud)."

14. Both §§ 1341 and 1343 state in pertinent part that "[w]hoever, having devised or intending to devise any scheme or artifice to defraud . shall be fined under this title or imprisoned not more than five years, or both."

15. In United States v. Brown, 79 F.3d 1550 (11th Cir.1996), we stated: "As we have pointed out, long-established common law fraud concepts inform but do not control our discussion of the evidence necessary to support a conviction under the mail fraud statute, especially in light of the requirement that federal criminal statutes be interpreted narrowly." Id. at 1559; see also Neder v. United States, 527 U.S. 1, 119 S.Ct. 1827, 1840-41, 144 L.Ed.2d 35 (1999) (relying on the rule that Congress intends to incorporate the well-settled meaning of the common-law terms it uses to hold that materiality of falsehood is an element of the federal mail and wire fraud statutes). An examination of the common law with respect to when a failure to disclose is fraudulent also supports the proposition that a nondisclosure of material information can constitute fraud when there is a duty to disclose. In Chiarella v. United States, 445 U.S. 222, 100 S.Ct. 1108, 63 L.Ed.2d 348 (1980), the Supreme Court explained:At common law, misrepresentation made for the purpose of inducing reliance upon the false statement is fraudulent. But one who fails to disclose material information prior to consummation of a transaction commits fraud only when he is under a duty to do so. And the duty to disclose arises when one party has information "that the other [party] is entitled to know because of a fiduciary or other similar relation of trust and confidence between them."Id. at 227-28, 100 S.Ct. at 1114 (quoting Restatement (Second) of Torts § 551(2)(a) (1976)).

16. The Safety Act requires a manufacturer of a motor vehicle or replacement equipment to "notify the Secretary [of Transportation] by certified mail, and the owners, purchasers, and dealers of the vehicle or equipment as provided in § 30119(d) of this section, if the manufacturer (1) learns the vehicle or equipment contains a defect and decides in good faith that the defect is related to motor vehicle safety." 49 U.S.C. § 30118(c). In this summary judgment posture, we assume that this duty was triggered for both defendants.

17. In addition, 49 C.F.R. § 578.6(a) provides for a $1100 limit for each violation and a $925,000 limit for a series of related violations. Although these limits are in apparent contravention of the statutory limits of $1000 for each violation and $800,000 for a series of related violations found in 49 U.S.C. § 30165, we need not decide which controls here. In any event, these limits to recovery would be circumvented if a private party could sue to enforce the Safety Act's notification requirements directly or via a state or federal RICO statute.

18. In fact, an amendment that would have added criminal penalties for knowingly and willfully violating safety standards promulgated under the Safety Act was considered and rejected by the Senate because, among other reasons, the Senate was "not dealing with mobsters and gangsters. What we are trying to do is sensibly and realistically to promote safety for the benefit of the public. We are not trying to pass a law that will be punitive. We are not reaching down to eliminate gangsterism by this bill. We are trying to promote safety." 112 Cong. Rec. 14249 (1966) (statement of Sen. Pastore); see 112 Cong. Rec. 14247-52.

19. Plaintiffs do not argue that the Safety Act creates a private right of action. Instead, they argue that they brought suit under the private right of action provided by the Georgia civil RICO statute and that the Safety Act's lack of a private right of action does not preclude them from proceeding under this state law theory. In Lowe v. General Motors Corp., 624 F.2d 1373 (5th Cir.1980), this Court explained that a state negligence case in which a violation of the Safety Act was used as evidence of the defendant's negligence is not the same as an action to enforce the act's notification

requirements. In other words, "[t]he mere fact that the law which evidences negligence is Federal while the negligence action itself is brought under State common law does not mean that the state law claim metamorphoses into a private right of action under Federal regulatory law." Id. at 1379. Thus, the Plaintiffs are correct that the lack of a private right of action under the Safety Act does not preclude them acting under a state law cause of action. However, the lack of a private right of action for a violation of the Safety Act's notification requirements is strong evidence that a violation of these requirements does not constitute the predicate act of mail or wire fraud. As explained above, the Plaintiffs' cause of action under the Georgia civil RICO statute fails because Plaintiffs cannot show a violation of the federal mail or wire fraud statutes, not because they could not proceed under a private right of action provided by the Safety Act.

20. In Cort v. Ash, 422 U.S. 66, 95 S.Ct. 2080, 45 L.Ed.2d 26, (1975), the Supreme Court set forth the following four guidelines:In determining whether a private remedy is implicit in a statute not expressly providing one, several factors are relevant. First, is the plaintiff one of the class for whose especial benefit the statute was enacted, that is, does the statute create a federal right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law?Id. at 78, 95 S.Ct. at 2088 (internal quotations and citations omitted).

21. Section 30116 does not involve the notification duties. It provides in pertinent part:(a) If, after a manufacturer or distributor sells a motor vehicle or motor vehicle equipment to a distributor or dealer and before the distributor or dealer sells the vehicle or equipment, it is decided that the vehicle or equipment contains a defect related to motor vehicle safety or does not comply with applicable motor vehicle safety standards prescribed under this chapter-(1) the manufacturer or distributor immediately shall repurchase the vehicle or equipment at the price paid by the distributor or dealer, plus transportation charges and reasonable reimbursement of at least one percent a month of the price paid prorated from the date of notice of noncompliance or defect to the date of repurchase; or(2) if a vehicle, the manufacturer or distributor immediately shall give to the distributor or dealer at the manufacturer's or distributor's own expense, the part or equipment needed to make the vehicle comply with the standard or correct the defect..(c) The parties shall establish the value of the installation and the amount of reimbursement under this section. If the parties do not agree, or if a manufacturer or distributor refuses to comply with subsection (a) or (b) of this section, the distributor or dealer purchasing the motor vehicle or motor vehicle equipment may bring a civil action. The action may be brought in a United States district court for the judicial district in which the manufacturer or distributor resides, is found, or has an agent, to recover damages, court costs, and a reasonable attorney's fee. An action under this section must be brought not later than 3 years after the claim accrues.49 U.S.C. § 30116.

22. For example, a private cause of action could result in damages far in excess of the civil penalties contemplated by the Safety Act thus undermining the civil penalty limits. See 49 U.S.C. § 30165(a) (limiting the civil penalty for violations of § 30118, which creates the notification duty, to $1000 for each violation and to $800,000 for a related series of violations).

23. On appeal, Plaintiffs have pointed only to the Safety Act as a source of any duty to disclose on the part of the Defendants; they articulate no other duty to disclose. Indeed, the district court expressly rejected Plaintiffs' argument below that such a duty existed under Georgia law because of "confidential relations" or "special circumstances."

24. Thus, we need not explore whether or under what other circumstances mail and wire fraud might be proved by nondisclosure of material facts intended to create a false and fraudulent representation.

25. Plaintiffs' Motion for Stay of Consideration of Appeal is denied.

ANDERSON, Chief Judge:

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PRODUCT LIABILITY

LAW SECTION · STATE BAR OF GEORGIA

Volume 2, Number 2 • March 2001

Nuts and Bolts Seminar Held in December

by Staci J. McClanahan
Spelman College

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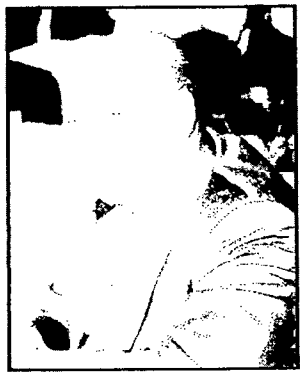

Above: Discussion on Plaintiff's Trial Techniques, left to right, Judge Gino Brogdon, Mike McGlamery, Leslie Bryan, Ted Eichelberger. Far right: Bernard Taylor, Seminar Moderator.

The first part of the morning session included a panel discussion surrounding discovery issues. Panelists included the Honorable M. Gino Brogdon, Judge, State Court of Fulton County; Jay B. Bryan of Hunton & Williams; and Christopher M. Farmer of Harper, Walden & Craig. Bernard Taylor of Alston & Bird, LLP served as moderator. The Panelists discussed various topics including: 1) the importance of requesting results of all tests performed on particular products; and 2) pursuing the facts surrounding previous cases when there is a substantial similarity between those and the pending case. Illustrating the former topic, Chris Farmer mentioned his strategy of utilizing ATLook, a directory that tracks law suits nationwide, to identify prior cases with substantial similarities to those he may be assigned.

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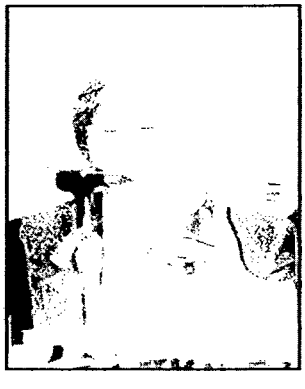

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May 22, 2001

Tenth Annual Product Liability Institute

New Section Officers

Chair-Elect
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Lee Tarte Wallace graduated *summa cum laude* and first in her class from Vanderbilt University. She graduate *cum laude* from Harvard Law School and clerked on the Eleventh Circuit for Judge James Hill. Lee is a partner with the Atlanta law firm of Butler, Wooten, Overby, Fryhofer, Daughtery & Sullivan. She served as editor of the Georgia Trial Lawyers Association's *Verdict* magazine for two years, from 1995-1997, and as parliamentarian of GTLA from 1998-1999. Lee also is a member of the State Bar of Georgia's Disciplinary Rules and Procedures Committee, which recently completed the rewriting of the ethical and disciplinary rules currently governing Georgia attorneys. She is a member of the Boards of Directors of the Consumer Law Center of the South and of the Georgia Civil Justice Foundation. Lee is a member of the Atlanta Bar Association's Judicial Selection and Tenure Committee and Techno-Committee. She has chaired the State Courts Committee of the Atlanta Bar Association and Vice Chaired the Membership Services Committee of the State Bar of Georgia. Lee has authored several articles on topics ranging from First Amendment to product liability law. In 1999, Lee and her husband George began a program at their church to assist family members and patients at Shepherd Place, a temporary living facility for persons with spinal and head injuries who are undergoing rehabilitation at Shepherd Spinal Center of Atlanta.

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James Dartlin ("Dart") Meadows is a trial lawyer concentrating in litigation including products liability, personal injury, medical malpractice, real estate and commercial disputes. He has tried a substantial number of cases in these areas since he began his practice in September, 1983.

Dart has spent a significant portion of his practice defending woodworking machinery manufacturers, distributors and dealers in products liability litigation throughout the United States. He has been national products liability counsel for one of the world's largest manufactures and distributors of industrial woodworking machinery for over ten years. He has been the co-chair of the Hand and Power Tool Subcommittee of the Defense Research Institute since 1997. Dart has spoken on product liability prevention and defense issues at the Defense Research Institute (DRI), the Woodworking Industry Conference, the Product Liability Prevention and Defense Group, the Web Sling and Tiedown Association and the Association of Wire Rope Fabricators, Dart has spoken every year since 1995 at the Atlanta seminar "Going Solo With Success".

Dart graduated *magna cum laude* from West Virginia University in 1979 and Order of the Coif from the West Virginia University College of Law in 1983. Dart attended graduate school

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Section Activities

March 15-17, 2001
ABA
Product Liability Annual
Committee Meeting
New Orleans, Louisiana
(312) 988-6256

June 20-23, 2001
ABA
Tort & Insurance Practice
Product Liability
Megaconference

June 13, 2001
Product Liability Section Reception
State Bar Annual Meeting
Kiawah, South Carolina

New Case Alert

by David Monde

AYRES V. GENERAL MOTORS CORP.

__ F.3d __
(11th Cir., Nov. 29, 2000)

Last week, the Eleventh Circuit Court of Appeals issued an important decision regarding limitations on civil and criminal liability for an auto maker's violation of the safety defect disclosure obligations under the Federal Motor Vehicle Safety Act, 49 U.S.C. § 30118. *Ayres v. General Motors Corp.*, __ F.3d __ (11th Cir., Nov. 29, 2000) (copy attached). In *Ayres*, the Eleventh Circuit reversed the district court and held that GM was entitled to summary judgment against the Georgia RICO claims in this class action potentially involving up to 4.5 million GM vehicles.

The Eleventh Circuit decision in *Ayres* makes some new law that should be helpful to automobile manufacturers and component part suppliers (including tiremakers) facing litigation involving the duty of a manufacturer to disclose purported "defects related to motor vehicle safety" under the Federal Motor Vehicle Safety Act. The Court assumed for purposes of argument that GM had a duty to disclose a defect and breached that duty. Nonetheless, the Court accepted GM's position that such a breach could not give rise to criminal liability under the federal mail and wire fraud statutes, or to derivative civil liability under the Georgia RICO statute, given the extensive administrative scheme under the Safety Act. The Court also held that the Safety Act confers no private cause of action to enforce its notification requirements, becoming only the second circuit court to address that issue.

The decision is also noteworthy in the context of removal jurisdiction. GM's lawyers removed the case from state court in 1996 based on a then new 11th Circuit decision, *Tapscott* v. *MS Dealer Serv. Corp.*, 77 F.3d 1353 (11th Cir. 1996). *Tapscott* allowed aggregation of putative class members' punitive damages claims to satisfy the amount in controversy requirement for diversity jurisdiction. After oral argument in this appeal, the 11th Circuit decided *Cohen v. Office Depot, Inc.*, 204 F.3d 1069 (11th Cir. 2000), which abrogated *Tapscott* under the prior precedent rule. The *Ayres* plaintiffs filed a motion to remand based on *Cohen*.

With diversity no longer a valid basis for jurisdiction, GM resisted remand by arguing that: (1) the state RICO claim was predicated on alleged violations of the federal mail and wire fraud statutes and, (2) the federal law issue of criminal and civil RICO liability based on violations of the Safety Act was substantial enough to confer federal question jurisdiction, even though the question was presented in the context of a state RICO claim. While several district court decisions had addressed the issue by remanding state law RICO actions, the 11th Circuit agreed with GM, finding that the Safety Act issue "involves a very substantial federal question" sufficient to sustain federal jurisdiction. The Eleventh Circuit was careful to point out that it was not holding that all state law RICO claims alleging predicate acts based on violations of federal statutes would be sufficient to give rise to federal question jurisdiction. Nonetheless, the *Ayres* decision may help efforts to remove future cases in light of *Cohen*, and certainly should be persuasive authority in removing cases involving allegations of Safety Act violations made in the context of state law claims.

David Monde is a general litigation partner in the Atlanta Office of Jones, Day, Reavis & Pogue. For the past five years, David has acted as lead counsel in his Firm's role as National Coordinating Counsel for GM in its Electronic Control Module Litigation, including the successful representation of GM in the Eleventh Circuit in Ayres. *David is a* cum laude *graduate of the University of Rochester (BA 1981) and Georgetown University Law Center (JD 1987).*

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PRODUCT LIABILITY

LAW SECTION · STATE BAR OF GEORGIA

Volume 2, Number 2 • March 2001

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by Staci J. McClanahan
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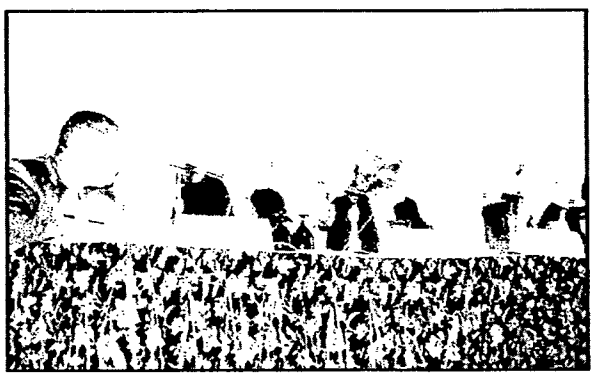

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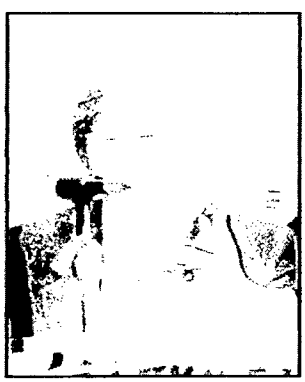

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Dart has spent a significant portion of his practice defending woodworking machinery manufacturers, distributors and dealers in products liability litigation throughout the United States. He has been national products liability counsel for one of the world's largest manufactures and distributors of industrial woodworking machinery for over ten years. He has been the co-chair of the Hand and Power Tool Subcommittee of the Defense Research Institute since 1997. Dart has spoken on product liability prevention and defense issues at the Defense Research Institute (DRI), the Woodworking Industry Conference, the Product Liability Prevention and Defense Group, the Web Sling and Tiedown Association and the Association of Wire Rope Fabricators, Dart has spoken every year since 1995 at the Atlanta seminar "Going Solo With Success".

Dart graduated *magna cum laude* from West Virginia University in 1979 and Order of the Coif from the West Virginia University College of Law in 1983. Dart attended graduate school

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Section Activities

March 15-17, 2001
ABA
Product Liability Annual
Committee Meeting
New Orleans, Louisiana
(312) 988-6256

June 20-23, 2001
ABA
Tort & Insurance Practice
Product Liability
Megaconference

June 13, 2001
Product Liability Section Reception
State Bar Annual Meeting
Kiawah, South Carolina

New Case Alert

by David Monde

AYRES V. GENERAL MOTORS CORP.

__ F.3d __ (11th Cir., Nov. 29, 2000)

Last week, the Eleventh Circuit Court of Appeals issued an important decision regarding limitations on civil and criminal liability for an auto maker's violation of the safety defect disclosure obligations under the Federal Motor Vehicle Safety Act, 49 U.S.C. § 30118. *Ayres v. General Motors Corp.*, __ F.3d __ (11th Cir., Nov. 29, 2000) (copy attached). In *Ayres*, the Eleventh Circuit reversed the district court and held that GM was entitled to summary judgment against the Georgia RICO claims in this class action potentially involving up to 4.5 million GM vehicles.

The Eleventh Circuit decision in *Ayres* makes some new law that should be helpful to automobile manufacturers and component part suppliers (including tiremakers) facing litigation involving the duty of a manufacturer to disclose purported "defects related to motor vehicle safety" under the Federal Motor Vehicle Safety Act. The Court assumed for purposes of argument that GM had a duty to disclose a defect and breached that duty. Nonetheless, the Court accepted GM's position that such a breach could not give rise to criminal liability under the federal mail and wire fraud statutes, or to derivative civil liability under the Georgia RICO statute, given the extensive administrative scheme under the Safety Act. The Court also held that the Safety Act confers no private cause of action to enforce its notification requirements, becoming only the second circuit court to address that issue.

The decision is also noteworthy in the context of removal jurisdiction. GM's lawyers removed the case from state court in 1996 based on a then new 11th Circuit decision, *Tapscott* v. *MS Dealer Serv. Corp.*, 77 F.3d 1353 (11th Cir. 1996). *Tapscott* allowed aggregation of putative class members' punitive damages claims to satisfy the amount in controversy requirement for diversity jurisdiction. After oral argument in this appeal, the 11th Circuit decided *Cohen v. Office Depot, Inc.*, 204 F.3d 1069 (11th Cir. 2000), which abrogated *Tapscott* under the prior precedent rule. The *Ayres* plaintiffs filed a motion to remand based on *Cohen*.

With diversity no longer a valid basis for jurisdiction, GM resisted remand by arguing that: (1) the state RICO claim was predicated on alleged violations of the federal mail and wire fraud statutes and, (2) the federal law issue of criminal and civil RICO liability based on violations of the Safety Act was substantial enough to confer federal question jurisdiction, even though the question was presented in the context of a state RICO claim. While several district court decisions had addressed the issue by remanding state law RICO actions, the 11th Circuit agreed with GM, finding that the Safety Act issue "involves a very substantial federal question" sufficient to sustain federal jurisdiction. The Eleventh Circuit was careful to point out that it was not holding that all state law RICO claims alleging predicate acts based on violations of federal statutes would be sufficient to give rise to federal question jurisdiction. Nonetheless, the *Ayres* decision may help efforts to remove future cases in light of *Cohen*, and certainly should be persuasive authority in removing cases involving allegations of Safety Act violations made in the context of state law claims.

David Monde is a general litigation partner in the Atlanta Office of Jones, Day, Reavis & Pogue. For the past five years, David has acted as lead counsel in his Firm's role as National Coordinating Counsel for GM in its Electronic Control Module Litigation, including the successful representation of GM in the Eleventh Circuit in Ayres. *David is a* cum laude *graduate of the University of Rochester (BA 1981) and Georgetown University Law Center (JD 1987).*