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Case Number 167,2015

IN THE SUPREME COURT OF THE STATE OF DELAWARE

REBECCA CLARK and JAMES SMITH, on behalf of themselves and all others similarly situated,	)	No. 167, 2015
Plaintiffs below/appellants,	)	On Appeal From the Superior Court of the State of Delaware in and for New Castle County
v.	)	C.A. No. N14C-02-188 JRJ [CCLD]
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	)	
Defendant below/appellee.	)	

APPELLANTS' REPLY BRIEF ON APPEAL

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State Farm's answering brief would make Orwell blush. The company, it says, has not been sued because of its unlawful delays in paying tens of thousands of covered PIP claims; rather, it has been sued for being overly virtuous — for "overreliance" on the PIP statute's penalty provisions, and for complying with the statute "to the letter." The judicial declaration sought by the plaintiffs, it insists, would rewrite the PIP statute by requiring State Farm to act within 30 days of receipt of a claim. This as opposed to the statute itself, which requires PIP carriers to either "make payment" or "provide the claimant with a written explanation of the reasons for . . . denial" ***within 30 days***. *See* 21 *Del. C.* §2118B(c). *See also State Farm Mut. Auto Ins. Co. v. Davis*, 80 A.3d 628, 631 (Del. 2013) (noting that section 2118B "addresses penalty interest on claims that go unpaid for more than 30 days.")

At the risk of stating the obvious, State Farm has not been "complying" with section 2118B; by incurring statutory interest penalties on roughly 6,500 PIP files from February 2011 through June 2014, State Farm has been violating the statute on a massive scale. What is more, the very heart of the statute requires payment of covered claims within 30 days:

> When an insurer receives a written request for payment of a claim for benefits pursuant to § 2118(a)(2) of this title, the insurer shall promptly process the claim and shall, no later than 30 days following the insurer's receipt of said written request for first-party insurance benefits and documentation that the treatment or expense is compensable pursuant to § 2118(a) of this title, make payment of the amount of claimed benefits that are due to the claimant or, if said claim is wholly or partly denied, provide the claimant with a written explanation of the reasons for such denial.

21 *Del. C.* §2118B(c). Similarly, the express purpose of the statute is not to generate interest penalties, but to encourage prompt payment and deter delay:

> The purpose of this section is to ensure reasonably prompt processing and payment of sums owed by insurers to their policyholders and other persons covered by their policies . . . and to prevent the financial hardship and damage to personal credit ratings that can result from the unjustifiable delays of such payments.

21 *Del. C.* § 2118B(a).

When one considers that State Farm incurred nearly 60 separate interest penalties on Ms. Clark's file alone, it is reasonable to assume that State Farm has likely committed over 100,000 violations of the statute since 2011. Of course, these statistics (that is, penalties incurred on roughly 6,500 files from early 2011 to mid-2014, with scores of violations on individual files) are nowhere mentioned in State Farm's answering brief; and State Farm simply elides the statute's 30-day requirement, as though the notion of paying covered claims within 30 days was the plaintiffs' invention, and not the law. But this Court need not be blinded to the

magnitude of State Farm's lawlessness. The General Assembly has told State Farm, in no uncertain terms, to pay covered PIP claims within 30 days of receipt; what State Farm is daily telling the General Assembly is unfit for public discourse.

Meanwhile, the notion that these plaintiffs are powerless to redress State Farm's disgraceful business practices is simply outlandish. Ms. Clark and Mr. Smith are owners of the company. They paid real money for one type of insurance product, but are getting another type altogether. Their dispute with State Farm is concrete and particularized; for while they claim that State Farm cannot properly treat 30-day violations and the resulting interest penalties as mere costs of doing business, State Farm says the opposite. There could not be a clearer conflict — for it is, in fact, a diametrical conflict — in the parties' framing of the nature of the rights the plaintiffs purchased when State Farm sold them PIP coverage.

I. THE PLAINTIFFS HAVE RAISED NO NEW ARGUMENT

As shown in the plaintiffs' opening brief, Ms. Clark and Mr. Smith explicitly argued below that their standing to sue State Farm derived in part from their status as owners of the company. A98-99. Even were this not the case, however, the plaintiffs' status as owners would not constitute a new argument on appeal. As this Court has held on more than one occasion,

> We will not permit a litigant to raise in this court for the first time matters not argued below where to do so would be to raise an entirely new theory of the case, but when the argument is merely an additional reason in support of a proposition urged below, there is no acceptable reason why in the interest of a speedy end to litigation the argument should not be considered.

Mundy v. Holden, 204 A.2d 83, 87 (Del. 1964) (internal quotation and citation omitted).

The proposition urged below (and urged again here on appeal) is that Ms. Clark and Mr. Smith have standing to sue State Farm. Their status as owners of the company is not a new argument, but simply one more reason to find that they have such standing. Indeed, that is precisely the way in which the "ownership" issue was framed before the trial court — as an additional basis for finding that the plaintiffs have standing to sue. *See* A98-99 (asserting at oral argument below that "[t]he question before the Court is whether these two plaintiffs who are actual State Farm policyholders, and because State Farm is a mutual company happen to be owners of the company to boot, even have standing to mount a legal challenge to State Farm's practice of systematically violating the 30-day standard and failing to give to their policyholders what they paid for . . . .")

State Farm has no answer for the plaintiffs' status as owners of the company; but that is not a reason for this Court to ignore that status. The argument on appeal — that Ms. Clark and Mr. Smith have standing to sue — is not new, but it finds strong (additional) support in the "ownership" issue.

II. A PLAINTIFF NEED NOT PLEAD A PARTICULARIZED BASIS FOR STANDING WHEN PLEADING A CAUSE OF ACTION

State Farm complains that the plaintiffs' proposed amended complaint does not expressly allege that State Farm's conduct "has violated state and federal law, placed the company's brand at risk, and generally betrayed the interest of its owners." Answering brief at 13 (internal quotations omitted). Similarly, State Farm says that the proposed amended pleading "do[es] not allege that [the plaintiffs] have been injured by reduced equity in State Farm, by increased risk of litigation or regulatory investigation, or by devaluation of the company's brand name, goodwill, or other intangible assets." *Id.*

The problem with this argument is twofold. First, the proposed amended complaint clearly and repeatedly alleges that State Farm has acted in violation of law. The very first paragraph of the amended complaint alleges that, by "treating its payment of [statutory interest] penalties as a mere cost of doing business," State Farm "defeats the purpose of section 2118B; . . . robs the statute of its intended deterrent effect; and . . . undermines and violates Delaware public policy." B47-48

(proposed amended complaint at ¶1). Similar allegations are repeated elsewhere in the proposed amended complaint. *See* B59 (*id*. at ¶39).

Second (and more importantly), State Farm cites no authority for the novel proposition that in pleading a cause of action, a plaintiff must plead particularized facts supporting his or her standing to sue. Certainly no such particularized pleading is required under Superior Court Civil Rule 9(b).

The question, then, is not whether Ms. Clark and Mr. Smith have pled (or propose to plead) with particularity their standing to sue State Farm in their capacity as owners of the company. Rather, the question is whether ***they have standing*** to sue State Farm in their capacity as owners of the company. And the answer to that question is clearly in the affirmative.

III. POLICYHOLDERS IN A MUTUAL INSURANCE COMPANY ENJOY EQUIVALENT RIGHTS TO STOCKHOLDERS IN A STOCK CORPORATION

State Farm attempts to dismiss the decision in *Heritage Healthcare Serv., Inc. v. The Beacon Mut. Ins. Co.*, No. 02-7016, 2004 WL 253547 (R.I. Super. Ct. Jan. 21, 2004) as a single case from a foreign jurisdiction. In fact, *Heritage Healthcare* carefully surveyed cases and commentaries from across the nation on the subject of a mutual company's duties to its policyholders. *Heritage Healthcare*, slip op. at *4-5. More importantly, State Farm does not dispute the standards set forth in *Heritage Healthcare*, nor does it cite any authority contrary

to those standards. There is no dispute, then, that those standards supply the applicable law: ***first***, that "policyholders in a mutual [insurance company] are equivalent to stockholders in a stock corporation in so far as rights and remedies are concerned;" and ***second***, that when policyholders proceed in their capacity as owners, "courts generally treat policyholders as being entitled to the same fiduciary duty as owed to stockholders." *Id.* at *4, *5.[1]

As to the latter question — whether Ms. Clark and Mr. Smith are contesting a particular insurance claim or claims (on the one hand) or instead proceeding in their capacity as owners (on the other) — State Farm essentially defaults. It does not seriously contend, much less demonstrate, that the plaintiffs are contesting individual PIP claims. Meanwhile, Ms. Clark and Mr. Smith have argued persuasively that State Farm's massive program of violating section 2118B runs afoul of a variety of criminal laws, including 18 U.S.C. § 1341 (regarding mail fraud), 18 U.S.C. § 1342 (regarding wire fraud), and state and federal RICO statutes. *See generally* 11 *Del. C.* § 1501 *et seq.* (identifying predicate crimes for criminal liability under Delaware's RICO statute). For that matter, it seems equally likely that State Farm's conduct constitutes theft by false pretense and/or false

[1] Ms. Clark and Mr. Smith have not sued State Farm for breach of fiduciary duty. Rather, they seek declaratory relief in the manner contemplated under Superior Court Civil Rule 23(b)(2). Such declaratory relief would necessarily touch upon the parties' rights, duties and legal relations, including State Farm's breach of fiduciary duty; but that does not transform the plaintiffs' claim into an equitable claim for breach of that duty. Notwithstanding, if State Farm is correct that this action properly belongs in the Court of Chancery, it would be a simple matter to transfer the case from Superior Court to Chancery Court.

promise under Delaware's criminal code.[2]

IV. THE BUSINESS JUDGMENT RULE DOES NOT PROTECT UNLAWFUL CONDUCT

State Farm's own citation of the business judgment rule acknowledges that the rule presumes an actor's good faith and lawful conduct. Answering brief at 16 (quoting *Emerald Partners v. Berlin*, 787 A.2d 85, 90-91 (Del. 2001)). Consistent with this particular aspect of the rule, it is settled that the business judgment rule does not apply to an illegal or unlawful act:

> The Individual Defendants make a related argument that the business judgment rule provides a complete defense to the Seventh Claim. The business judgment rule is discussed in greater depth below. For present purposes, it suffices to say that it does not provide a defense to an unlawful dividend claim. *** To the contrary, the business judgment rule does not apply because the payment of an unlawful dividend is an illegal act.

In re Musicland Holding Corp., 398 B.R. 761, 785 (Bankr. D. Minn. 2008) (citation omitted).

[2] Under 11 *Del. C.* § 843, "A person commits theft when, with the intent prescribed in § 841 of this title [that is, the intent to deprive another of property], the person obtains property of another person by intentionally creating or reinforcing a false impression as to a present or past fact, or by preventing the other person from acquiring information which would adversely affect the other person's judgment of a transaction." Under 11 *Del. C.* § 843, "A person commits theft when, with the intent prescribed in § 841 of this title, the person obtains property of another person by means of a representation, express or implied, that the person or a third person will in the future engage in particular conduct, and when the person does not intend to engage in such conduct or, as the case may be, does not believe the third person intends to engage in such conduct."

When State Farm (or any insurer) pays a covered Delaware PIP claim more than 30 days after receipt of the claim, it acts unlawfully — that is, in direct violation of section 2118B's requirement that covered claims be paid within 30 days. *See* 21 *Del. C.* § 2118B(c) (requiring, for covered claims, that "the insurer shall promptly process the claim and shall, no later than 30 days following the insurer's receipt of said written request for first-party insurance benefits and documentation that the treatment or expense is compensable pursuant to § 2118(a) of this title, make payment of the amount of claimed benefits that are due to the claimant . . . .") When State Farm engages in this particular statutory violation multiple times on each of roughly 6,500 claim files, it acts unlawfully on a colossal scale. On these facts, the business judgment rule has no place in the analysis.

V. THE PLAINTIFFS HAVE ALSO BEEN HARMED IN THEIR CAPACITY AS POLICYHOLDERS

As shown above, Ms. Clark and Mr. Smith have standing in their capacity as owners of State Farm. They likewise have standing in their capacity as policyholders; and this "policyholder" standing rests on two separate and independent bases. First, as demonstrated by the plaintiffs' earlier discussion of *Heathergreen Commons Condo. Ass'n v. Paul*, 503 A.2d 636 (Del. Ch. 1985), the erosion or deprivation of a party's legal rights constitutes an actionable injury. *See Heathergreen Commons*, 503 A.2d at 642. Second, it must be remembered that State Farm is not a philanthropic endeavor. Rather, the plaintiffs paid substantial

premiums for the full panoply of rights encompassed in their policies' PIP coverage — rights that State Farm has dramatically curtailed as a matter of regular business practice.

State Farm seeks to distinguish *Heathergreen Commons* because there (according to State Farm) the defendant/counterclaimant landowners faced imminent harm, including loss of use of their property and interference with their plans to build on it. But State Farm ignores the fact that the *Heathergreen* landowners had yet to obtain the zoning variance necessary for their building plans. This circumstance led the landowners' adversaries to argue that (i) the zoning variance might never be granted, and (ii) unless and until the zoning variance was granted, the landowners suffered no injury, and the parties' dispute remained unripe. This is conceptually identical to State Farm's argument here: regarding Mr. Smith, for example, State Farm says that "[i]n order for Smith to be harmed by a delayed payment, it would require that he be involved in another automobile accident; that the accident is covered under his PIP policy; that State Farm makes a coverage determination or pays a claim outside of the 30-day window; and, that Smith suffers cognizable harm from that delay." Answering brief at 22-23.

The Chancery Court rejected the attack on the landowners' counterclaim, recognizing that the very purpose of Delaware's Declaratory Judgment Act is to remove the uncertainties that sometimes cloud parties' legal rights and relations:

> This case clearly fits both the letter and the spirit of the Declaratory Judgment Act. By their complaint and by the position they have taken in this lawsuit, the plaintiffs have created an "uncertainty" with respect to the defendants' "rights, status and other legal relations" as owners of [the disputed parcel of land]. A purpose of the Act is to afford relief from such uncertainty.

Heathergreen Commons, 503 A.2d at 642. Adjudication of the parties' rights and relations in *Heathergreen Commons* was thus not made to wait on the future fate of a zoning variance; and in the same vein, adjudication of the plaintiffs' rights as against State Farm should not await any future auto collision.

State Farm likewise seeks to distinguish *Boswell v. Liberty Nat'l Life Ins. Co.*, 643 So.2d 580 (Ala. 1994), *Gooch v. Life Investors Ins. Co. of Amer.*, 264 F.R.D. 340 (M.D. Tenn. 2009), and *Horvath v. Keystone Health Plan East, Inc.*, 333 F.3d 450 (3d Cir. 2003). *Boswell* is different from this case, says State Farm, because there the plaintiffs were fraudulently induced into purchasing a new policy that they believed would provide additional coverage, when in fact the new policy offered narrower coverage than its predecessor. But the plaintiffs in *Boswell* never had occasion to file a claim under either policy, leading the insurer to argue (as State Farm argues) that in the absence of a claim, there could be no harm.

Boswell is thus identical to this case. Ms. Clark and Mr. Smith paid substantial premiums for PIP coverage that would comport with Delaware's statutory PIP scheme — including payment of covered PIP claims within 30 days.

Owing to State Farm's brazen business practices, however, what they have actually purchased is a lesser and diluted form of coverage, under which covered claims are routinely paid beyond (and often far beyond) the 30-day deadline. Just as in *Boswell*, then,

> When a person, such as [the plaintiffs] in this case, buys . . . insurance, she hopes that she will never have to "use" it. That does not mean that she cannot be injured by the loss of, or a deduction in, those benefits that could be claimed, should that very event against which she sought to be insured ever occur . . . . ***Make no mistake, even if the insured files no claim, the loss of what the insured paid for constitutes legal damage or a legal injury.***

Boswell, 643 So.2d at 582 (emphasis added).

State Farm attempts to distinguish *Gooch* on the basis that it "involved the defendant's alleged refusal to pay certain [chemotherapy] charges that were covered by the plaintiffs' insurance policy." Answering brief at 25. But this characterization of the facts in *Gooch* is at best incomplete, and at worst misleading; for the plaintiff class that was certified in *Gooch* included not only insureds who actually lost money under the defendant's new payment regime, but others who never even received chemotherapy. *Gooch*, 264 F.R.D. at 344-46. In granting class certification, the district court identified the harm suffered by policyholders generally:

> The Defendants' interpretation [of its contractual duties] nullifies the purpose of the policy to provide supplemental coverage that is in addition to what the primary insurors (*sic*) agreed to pay. In the Defendants' scenario, Defendants accept premiums without any meaningful contractual obligations to pay benefits.

Gooch, 264 F.R.D. at 358-59.

State Farm's attempt to distinguish *Horvath* is equally unavailing. *Horvath* is different, says State Farm, because there the plaintiff's HMO failed to disclose the details of cost-control incentives that it offered to participating care providers. Yet the nondisclosures in *Horvath* did not result in the type of harm that State Farm insists is necessary to standing. To the contrary, the Third Circuit expressly noted that Horvath "[did] not allege that she ha[d] been personally affected by the existence of incentives or that the care she received from the Keystone HMO was defective or substandard in any way." *Horvath*, 333 F.3d at 453. Indeed, it was precisely on this basis that the Third Circuit rejected Horvath's standing to seek monetary relief. But as State Farm concedes (at least tacitly), the Third Circuit found that Horvath had the necessary standing to pursue injunctive relief: "Horvath need not demonstrate actual harm in order to have standing to seek injunctive relief requiring that Keystone satisfy its statutorily-created disclosure or fiduciary responsibilities." *Id.* at 456 (citations omitted). *See also Warth v. Seldin*, 422 U.S. 490, 500 (1975) ("The actual or threatened injury required by Art[icle] III may

exist solely by virtue of statutes creating legal rights, the invasion of which creates standing") (internal quotation omitted).

VI. THE SOUGHT-AFTER DECLARATION IS ENTIRELY CONSISTENT WITH DELAWARE LAW

In a highly revealing (and equally startling) passage in State Farm's brief, the company says that the judicial declaration sought by Ms. Clark and Mr. Smith would "rewrite" section 2118B by effectively requiring "all Delaware insurers to pay or deny a PIP claim within 30 days, without exception." Answering brief at 26. Again, section 2118B provides that "[w]hen an insurer receives a written request for payment of a claim for benefits pursuant to § 2118(a)(2) of this title, the insurer shall promptly process the claim and shall, no later than 30 days following the insurer's receipt of said written request for first-party insurance benefits and documentation that the treatment or expense is compensable pursuant to § 2118(a) of this title, make payment of the amount of claimed benefits that are due to the claimant or, if said claim is wholly or partly denied, provide the claimant with a written explanation of the reasons for such denial." Thus, when an insurer receives a PIP claim, it may (i) pay the claim within 30 days, (ii) deny the claim as insufficiently documented within 30 days, or (iii) deny the claim on some substantive ground within 30 days. This is not a matter of interpretation; it is a matter of standard English usage, and the plain meaning of the statute.

The statute does not say that insurers must act within 30 days unless they prefer to pay statutory interest. It affirmatively requires that they act within 30 days; and if they fail to do so on a covered claim, it imposes statutory interest as a penalty and deterrent.

As the plaintiffs have previously noted, the very essence of PIP is speed. The PIP statute's purpose "is to remove the expense and uncertainty of automobile accident litigation, allowing the insured to receive prompt payment for medical expenses and lost wages regardless of who was at fault." *Selective Ins. Co. v. Lyons*, 681 A.2d 1021, 1024 (Del. 1996). The express purpose of section 2118B is to deter auto insurers from delay:

> The purpose of this section is to ensure reasonably prompt processing and payment of sums owed by insurers to their policyholders and other persons covered by their policies . . . and to prevent the financial hardship and damage to personal credit ratings that can result from the unjustifiable delays of such payments.

21 *Del. C.* § 2118B(a). In addition, both this Court and the Superior Court have expressly characterized section 2118B(c)'s interest provision as a ***penalty*** — that is, something specifically intended to punish and deter. *See State Farm Mut. Auto. Ins. Co. v. Davis*, 80 A.3d 628, 631 (Del. 2013) ("Davis also alleged claims of breach of contract, bad faith, and violations of 21 *Del. C.* § 2118B, which addresses penalty interest on claims that go unpaid for more than 30 days"); *Spine Care Delaware, LLC v. State Farm Mut. Auto. Ins. Co.*, 2007 WL 495899 (Del.

Super. Ct. Feb. 5, 2007), Op. at *1 ("The purpose of PIP insurance is to protect policyholders from the financial difficulties that can result from unpaid or overdue bills. To achieve this purpose, the PIP statute imposes on insurance carriers specific obligations, as well as penalties for failing to comply with those obligations in a timely fashion.")

In short, the judicial declaration sought by the plaintiffs would not rewrite anything. The plaintiffs seek not to change the law, but to enforce it, against a recidivistic corporate actor that is violating it as a matter of regular business practice.

VII. THE SOUGHT-AFTER DECLARATION WOULD REMEDY ACTUAL AND ALREADY-EXISTING HARM

State Farm scrupulously avoids mention of section 2118B's 30-day requirement within its auto policies. Nonetheless, that requirement is very much a part of the contract.

Indeed, this Court has repeatedly recognized that the statutory PIP scheme is part of a Delaware auto policy, regardless of any other express terms employed by the insurer. *See Harris v. Prudential Prop. & Cas. Ins. Co.*, 632 A.2d 1380, 1381-82 (Del. 1993) (policy exclusions that limit statutory grant of coverage will not be recognized); *Hudson v. State Farm Mut. Ins. Co.*, 559 A.2d 1168, 1171 (Del. 1990) (collecting cases for the same proposition); *Bass v. Horizon Assur. Co.*, 562 A.2d 1194, 1196-97 (Del. 1989) (refusing to "read exclusions into statutorily mandated

coverage in the absence of express legislative authorization"); *State Farm Mut. Auto. Ins. Co. v. Wagamon*, 541 A.2d 557, 560 (Del. 1988) (rejecting exclusion that "clearly conflicts with the statutory scheme of sections 2118 and 2902.") In addition, it is a matter of black letter contract law that "[i]f no time for [contractual] performance is fixed, the court will imply a reasonable time . . . ." *Martin v. Star Publishing Co.*, 126 A.2d 238, 244 (Del. Super. Ct. 1956). As the statutorily-mandated window for paying or denying PIP claims, section 2118B's 30-day period is conclusively reasonable as a matter of law.

This means that Ms. Clark and Mr. Smith purchased an insurance product that promised coverage determinations on PIP claims generally, and payment of covered PIP claims in particular, within the statutory 30-day window. That is the bargain for which they paid; but it is not the bargain they received. Instead, they effectively purchased a pig in a poke — a misfortune shown most vividly by State Farm's failure to make timely payment on Ms. Clark's covered PIP claims on 59 separate occasions.

For this reason, the injury these plaintiffs have suffered is not inchoate, hypothetical or speculative. The premium dollars they paid were not inchoate, hypothetical or speculative, either. The coverage for which they paid was coverage that conformed to specific statutory requirements; but the coverage they actually possess makes a mockery of those requirements. *Cf. Gooch*, 264 F.R.D. at

358-59 ("The Defendants' interpretation [of its contractual duties] nullifies the purpose of the policy . . . . ")

VIII. BECAUSE STATE FARM CONTINUES TO DENY ITS OBLIGATION TO PAY COVERED PIP CLAIMS WITHIN 30 DAYS, THE DOCTRINE OF VOLUNTARY CESSATION APPLIES

With respect to the doctrine of voluntary cessation, State Farm has it precisely backwards. State Farm says that the doctrine cannot apply because it freely acknowledges that claimants are entitled to statutory interest for late payment of covered PIP claims. But as State Farm's answering brief makes abundantly clear, State Farm disputes that claimants are entitled ***to be free of late payments*** in the first instance. That is, State Farm denies that section 2118B requires it to act one way or another within 30 days of receipt of the claim.

State Farm is thus in the same position as the cable provider in *Cooper v. Charter Comm. Entertainments, I, LLC*, 760 F.3d 103 (1st Cir. 2014). With each of its tens (or hundreds) of thousands of late PIP payments, State Farm maintains its massive machinery of delay — thereby defeating the intended deterrent under section 2118B. Just as in *Cooper*, State Farm "'continues to defend the legality' of its action, making it 'not clear why the [company] would necessarily refrain from [the same conduct] in the future.'" *Cooper*, 760 F.3d at 108 (quoting *Knox v. Service Employees Int'l Union, Local 1000*, 132 S.Ct. 2277, 2287 (2012)).

CONCLUSION

For the reasons set forth above, and for the reasons set forth in their opening brief, plaintiffs/appellants Rebecca Clark and James Smith respectfully request that this Court reverse the Superior Court's March 30, 2015 ruling on their motion for leave to amend the complaint.

Respectfully submitted,

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