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From:	4ME
To:	EVOQ (NHTSA); Robertson, Faithia (NHTSA); Lewis, Brenton
Cc:	NHTSA ODI CED; Marion Strasser-King; AnnMarie Ambrose
Subject:	ODI-11501815
Date:	Tuesday, June 20, 2023 1:12:22 PM
Attachments:	[redacted]

From: [redacted]
Sent: Saturday, June 17, 2023 2:24 PM
To: nhtsa.webmaster@dot.gov <nhtsa.webmaster@dot.gov>
Subject: FCA

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[redacted]
Newburgh, NY [redacted]

January 23rd2023

Vince's Auto Body Works
185 Smith St.
Poughkeepsie, NY 12601

Re: VIN# 1C4RJFAG8LC[redacted]
[redacted] v. Chrysler FCA US LLC. *et al. 23Cv.2361*

Dear Vivian:

I regret to inform you that the repairs done by your Body Shop resulted in (spoilage). I am requesting your claim adjuster information because your company has incurred vicarious liability. Vince's Auto Body Shop was negligent to make any repairs to the 2020 Jeep Grand Cherokee Laredo, beyond towing it for safe keeping because of the product concern. You know that or you should have known that.

By law, when I raised a product concern, the investigation could only be performed by a certified Chrysler mechanic for Stellantis. You do not dispute that you have no certified Chrysler Mechanics on your staff, nor do you dispute that you are out of network auto Body Shop. Therefore, Vince's Auto Body Shop is unqualified to determine the cause of the accident(s) on January 11th, 2023, by simply estimating the physical damage. Nor could State Farm claim adjuster or even Stellantis who only retrieves the crash data from the vehicle's Black Box.

On June 5th, 2023, in a federal lawsuit that I filed, Stellantis contributed your repairs either in whole or in part for spoilage. Subsequently spoilage may reduce or eliminate my damages altogether. Therefore, you are liable to me now.

Since I am suing the FCA, for failing to investigate, you now have incurred vicarious liability. Despite reading the Black Box CRD Crash Data, evidence of a vehicle malfunction, Chrysler is denying all liability, because of "spoilage". This is ironic isn't it… two big companies like State Farm and Stellantis trying to put you out of business to cover for themselves. Therefore,

your liability to me stems from repairs to the vehicle, as an out of network, auto body shop, preventing Chrysler from issuing a release and certifying the vehicle's safety and possibly from liability. Naturally your repairs have rendered the vehicle a lemon. By you implying and stating verbally to the vehicle's owner that the vehicle is certified safe when you have no ability to sign a release or to certify the vehicle is considered negligence and deceptive practices act under Article 22-A, Consumer Protection from Deceptive Acts and Practices Section 349. Plavin v. Group Health Inc., 2020 N.Y. Slip Op. 02025 (Mar. 24, 2020).

In 1970, the New York Legislature enacted General Business Law § 349, which made unlawful any "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state." GBL § 349 (a). Seven years earlier, the New York Legislature enacted GBL § 350, which made unlawful "[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state." These consumer protection statutes were enacted to "strik[e] down all forms of deceptive acts and practices." Slip Op. at *6 (internal quotation marks and citations omitted).

Initially, only the Attorney General could sue to enforce these laws. However, the Legislature subsequently amended both Section 349 and Section 350 to add a private right of action for "any person who has been injured by reason of any violation of th[ese] section[s]," allowing injunctive relief and damages, as well as reasonable attorney's fees. GBL § 349(h) and GBL § 350-e (3).

To state a claim under GBL §§ 349 and 350, "a plaintiff must allege that a defendant has engaged in (1) consumer-oriented conduct, that is (2) materially misleading, and that (3) the plaintiff suffered injury as a result of the allegedly deceptive act or practice. Koch v. Acker, Merrall & Condit Co., 18 N.Y.3d 940, 941 (2012); see Goshen v. Mutual Life Ins. Co. of N.Y., 98 N.Y.2d 314, 324 n.1 (2002). A claim under these statutes does not lie when the plaintiff alleges only "a private contract dispute over policy coverage and the processing of a claim which is unique to the [] parties, not conduct which affects the consuming public at large." New York Univ. v Continental Ins. Co., 87 N.Y.2d 308, 321 (1995) (internal quotation marks omitted). Thus, a plaintiff claiming the benefit of either Section 349 or Section 350 "must charge conduct of the defendant that is consumer-oriented" or, stated differently, "demonstrate that the acts or practices have a broader impact on consumers at large." Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, 85 N.Y.2d 20, 25 (1995). Notably, the deceptive practice does not have to rise to "the level

of common-law fraud to be actionable under section 349." Boule v. Hutton, 328 F.3d 84, 94 (2d Cir. 2003) (citing Gaidon v. Guardian Life Ins. Co., 94 N.Y.2d 330, 343 (1999)). In fact, "[a]lthough General Business Law § 349 claims have been aptly characterized as similar to fraud claims, they are critically different." Gaidon, 94 N.Y.2d at 343. For example, while reliance is an element of a fraud claim, it is not an element of a GBL § 349 claim. Stutman v. Chemical Bank, 95 N.Y.2d 24, 29 (2000); Small v. Lorillard Tobacco Co., 94 N.Y.2d 43, 55-56 (1999). In addition, a plaintiff must prove "actual" injury to recover under the statutes, though not necessarily pecuniary harm. Stuntman, 95 N.Y.2d at 29; Oswego, 85 N.Y.2d at 26. And the plaintiff must prove the deceptive act caused the injury. Id.; Oswego, 85 N.Y.2d at 26.

You need not be concerned as to who the vehicle's owner is, because the actual injury is spoilage by virtue of your repair and your inability to sign a release or to certify the vehicle rendering the vehicle a lemon. Your conduct may reduce or eliminate my damages in my civil complaint against FCA. Vince's Auto Body Shop has a duty owed as well as State Farm and the FCA. You have your own strict liability to the vehicle's owner and vicarious liability to me for spoilage.

By now, you should understand the seriousness of your actions, and your liability to me, for destroying evidence (spoilage) and to the vehicle's owner for the cost of a new vehicle. Under the deep pocket theory State Farm and Chrysler will pay your portion should I add you in the pending litigation. I will also ask the court to enjoin you and your business pending the litigation. I am affording you the opportunity to provide your claims adjuster information.

Primary factors to consider in ascertaining whether the person's conduct lacks reasonable care are the foreseeable likelihood that the person's conduct will result in harm, the foreseeable severity of any harm that may ensue, and the burden of precautions to eliminate or reduce the risk of harm. *See* Restatement (Third) of Torts: Liability for Physical Harm § 3 (P.F.D. No. 1, 2005). Negligent conduct may consist of either an act, or an omission to act when there is a duty to do so. *See* Restatement (Second) of Torts § 282 (1965). *United States v. Carroll Towing, 159 F.2d 169 (2d Cir. 1947).* Emotional distress/harm may meet the bodily harm requirement (even if there is no accompanying physical harm).

Vince has repeatedly lied and said that I told him that I engaged the accelerator rather than the brake. This matter only concerns you because from the moment you evaluated and repaired the vehicle you accrued vicarious liability because neither Vince's Auto Body Shop nor any of its

employees are certified Chrysler mechanics and you are an out of network shop. Your vicarious liability is imputed from the repairs beyond towing. Your liability is not for the cause of the accident but for preventing the cause of the accident from being known by virtue of your repairs by destroying evidence. (spoilage).

"Spoliation" of evidence occurs when someone with an obligation to preserve evidence with regard to a legal claim neglects to do so or intentionally fails to do so. Such a failure to preserve evidence can take place by destruction of the evidence, damage to the evidence, or losing the evidence. When spoliation occurs, the party responsible may be held accountable in court through a variety of different sanctions. Those sanctions vary greatly from state to state. In 1984, California was the first state to recognize the tort of spoliation. Smith v. Superior Ct., 151 Cal. App.3d 491, 198, Cal. Rptr. 829, 831 (Cal. 1984). However, the majority of jurisdictions that have subsequently examined the issue have declined to create or recognize such a tort. Only Alabama, Alaska, Florida, Indiana, Kansas, Louisiana, Montana, New Mexico, Ohio, and West Virginia have explicitly recognized some form of an independent tort action for spoliation. California overruled its precedent and declined to recognize first-party or third-party claims for spoliation. Temple Cmty. Hosp. v. Superior Ct., 20 Cal.4 th 464, 84 Cal. Rptr.2d 852, 976 P.2d 223, 233 (Cal. 1999); Cedars-Sinai Med. Center v. Superior Ct., 18 Cal.4th 1, 74 Cal. Rptr.2d 248, 954 P.2d 511, 521 (Cal. 1998). Generally, those states that have recognized or created the tort of spoliation in some form, limit such an action to third-party spoliation of evidence related to pending or actual litigation. First-party spoliation claims are those claims for destruction or alteration of evidence brought against parties to underlying litigation. Conversely, third-party spoliation claims are those destruction or alteration of evidence claims against non-parties to underlying litigation. Moreover, most of these states generally hold that third-party spoliator must have had a duty to preserve the evidence before liability can attach. The majority of states that have examined this issue have preferred to remedy spoliation of evidence and the resulting damage to a party's case or defense, through sanctions or by giving adverse inference instructions to juries. Sanctions can include the dismissal of claims or defenses, preclusion of evidence, and the granting of summary judgment for the innocent party. The following is a compendium of decisions for the states that have examined the issue of spoliation. It should be remembered that, if a matter is pending in federal court, federal evidentiary rules, rather than state spoliation laws, may be applied. King v. Ill. Cent. R.R., 337 F.3d 550 (5th Cir. 2003). A district court has discretion to admit evidence of spoliation and to

instruct the jury on adverse inferences. United States v. Wise, 221 F.3d 140 (5th Cir. 2000) (citing Higgins v. Martin Marietta Corp., 752 F.2d 492 (10th Cir. 1985)). The adverse inference to be drawn from destruction of records is predicated on bad conduct of the defendant. The circumstances of the act must manifest bad faith. Mere negligence is not enough, because it does not sustain an inference of consciousness of a weak case. Vick v. Tex. Emp't Comm'n, 514 F.2d 734 (5th Cir. 1975). Therefore, one must show that the party alleged to have destroyed evidence acted in "bad faith" in order to establish entitlement to an adverse inference. A court will require even more compelling evidence of bad faith when asked to apply the more severe sanction of dismissal or summary judgment. Stahl v. Wal-Mart Stores, Inc., 47 F. Supp.2d 783 (S.D. Miss. 1998). Third-Party Negligent Spoliation: The New York Court of Appeals declined to recognize such a cause of action under the facts of Met-Life Auto & Home v. Joe Basil Chev., Inc., 1 N.Y.3d 478, 807 N.E.2d 865, 775 N.Y.S.2d 754 (N.Y. 2004). The Court in this case focused its decision on the non-existence of a duty giving rise to preservation of evidence and the lack of notice to preserve the evidence militated against establishing such a cause of action.

It is my opinion that State Farm and the FCA (Stellantis) used you for the purpose of destroying evidence, to reduce or eliminate their own liability, but in the wake of General Business Law the role that you played establishes negligence and liability. You have repeatedly verbally told me that there is nothing wrong with the vehicle when you are not qualified to determine that because you are not a certified Chrysler Mechanic, and you are an out of State Farm network auto body mechanic. You may not be legally certified to sign a release.

I am requesting a copy of all the repairs done on that vehicle since January 11th, 2023. You are still liable to the vehicle's owner whether you take responsibility or not, because down the road any new malfunctions or vehicle problems or injuries become your responsibility since you repaired a product concern, releasing State Farm and the FCA US LLC. (Stellantis) from any liability to you and your business. Not to me, because you all were negligent and you are liable as a matter of law, under GBL § 349(h) and GBL § 350-e (3) and GBL §§ 349 and 350.

I filed the Insurance claim, I requested that the evidence preserved. I will file for motion of summary judgment as a matter of law, for causation of spoilage, and vicarious liability in federal court see Morocho *v.* Boulevard Gardens Owners Corp., 2018 NY Slip Op 6730; Viera v WFJ Realty Corp., 140 AD3d 737, 738; Moran v 200 Varick St. Assoc., LLC, 80 AD3d 581, 582). Accept this letter as my official claim for your claims adjuster. I expect to hear from your claims

adjuster immediately. If you do not have insurance, then your business must be closed, and I will assume ownership as part of a judgement against you. Do not convey any property lis pendens. See Transfer of Property Act 1882 section 52.

Sincerely,

[redacted]

cc:
United States District Judge Philip M. Halpern
United States District Court
500 Pearl Street
New York, NY 10007

Better Business Bureau
30 East 33rd, Street, 12th, Floor
New York, NY 10016
Phone: (212) 533-6200
inquiry@newyork.bbb.org

NHTSA Headquarters
1200 New Jersey Avenue SE.
West Building
Washington, DC 20590

John Owens
19 Kenney Ct.
Newburgh, NY 12550

Milford Chrysler
500 Routes 6 & 209
Milford PA 18337

State Farm Corporate Headquarters
State Farm Insurance
One State Farm Plaza
Bloomington, IL 61710

Tiffany Alexander, Esq.
Nelson Mullins Riley & Scarborough LLP
1235 West Lakes Drive, Suite 216
Berwyn, PA 19312
tiffany.alexander@nelsonmullins.com