



## Alerts

### Eleventh Circuit Holds Insurer's Protectable Interest Protects Insurer From Slander and Tortious Interference Claims

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*Insurance Coverage Alert*

In *Gunder's Auto Ctr. v. State Farm Mutual Auto. Ins. Co.*, No. 10-11739, 2011 WL 1320422 (11th Cir. April 7, 2011), the U.S. Court of Appeals for the Eleventh Circuit considered whether a body shop could maintain causes of action against an insurer for slander and tortious interference with a business relationship. Until 2004, plaintiff auto body repair shop was a member of defendant insurer's preferred program. Participants in that program only charged the insureds of the insurer prices to which the insurer had already agreed. The insurer eventually terminated that membership because the auto body shop had communicated with other preferred program members about the insurer refusing to pay for certain types of repair work. Thereafter, litigation commenced between the parties because the insurer advised its insureds that the auto body shop overcharged its customers and provided untimely, inefficient and substandard work. The insurer also attempted to steer its insureds to other body shops. The trial court granted the insurer summary judgment on the cause of action for slander and dismissed the count that asserted the insurer tortiously interfered with the auto body shop's business relationships with current and prospective customers.

The Eleventh Circuit noted that statements are privileged when they are made in good faith by someone having an interest in the subject matter. The insurer had a protectable interest in its insureds' automobiles because the insurer was obligated to indemnify its insureds for work performed by the auto body shop. Based on that obligation, the court held that the insurer's statements regarding the quality, timeliness and cost of the auto body shop's repairs on vehicles owned by the insureds of the insurer were privileged. Because the auto body shop failed to establish those privileged statements were made with malice, the Eleventh Circuit affirmed the trial court's order granting summary judgment.

In addressing the trial court's order dismissing the tortious interference count, the Eleventh Circuit likewise relied on the insurer's protectable interest. The court noted that a tortious interference claim cannot succeed when an insurer undertakes actions to safeguard or protect its own financial or economic interests. Because the insurer had a protectable interest in work performed on its insureds' automobiles, the court held that the insurer did not tortiously interfere with any business relationships when it steered its insureds to other body shops.

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## Practice Note

Provided that an automobile insurance carrier's actions were committed without malice, this decision should provide comfort to an insurer that is sued under similar circumstances. Furthermore, if a complaint for slander only alleges that an automobile insurer's actions concerned its insureds' vehicles, it would be prudent for defense counsel to seek dismissal of the case in its entirety.

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