UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS DARIS, II,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant

_____/

Case No. 94-CV-71185-DT

HONORABLE DENISE PAGE HOOD

MEMORANDUM OPINION AND ORDER

Plaintiff filed the instant claim under the Federal Tort Claims Act, 28 U.S.C. § 2671 et seq. A bench trial was held on the above-captioned matter. The following are the Court's findings of facts and conclusions of law.

I. FINDINGS OF FACTS:

The issue of negligence is stipulated to by the parties. The sole factual issue before the Court is the amount of damages. All exhibits were admitted at trial by stipulation.

On March 17, 1991, Plaintiff, Thomas Daris, II, was involved in a motor vehicle accident. Plaintiff was a rear seat passenger in an automobile driven by a friend. A motor vehicle driven by a United States Immigration and Naturalization Service employee, Donald Richard Buechner, ran into the back of the vehicle in which Plaintiff was riding.

Plaintiff testified at trial that he was born on November 6, 1972 and graduated from high school in 1990. He took some courses at Macomb Community College. When Plaintiff was 14 years old, he obtained his first job at Burger King. He thereafter worked at Showcase Cinemas

as a cashier and also at the concession stands. Plaintiff also worked as a bag boy at Oakridge Supermarkets. At 17, Plaintiff began working in jobs involving fluid power repairs producing seals used to seal certain hydraulic units. At the time of the accident, and currently, Plaintiff is employed with Seal Jet, a manufacturer of seals for hydraulics used in landing gears for jet airplanes. Seal Jet employs only three employees, including Plaintiff, who works a 40 hour week. Plaintiff testified he has been self-sufficient since he was 19 years old, except for a few times when he had to live with his father. Currently, Plaintiff lives with his girlfriend who is also an employee of Seal Jet.

Immediately before the truck rear ended the vehicle Plaintiff was in, Plaintiff testified that he heard the truck coming from behind and that he then decided to put on his seat belt. Upon impact, Plaintiff testified that the front two seats collapsed and the radio in the front of the car popped out. The passenger seat hit both of Plaintiff's knees and his head hit the back of the front seat. Following the accident, Plaintiff was given a ride to a gas station where Plaintiff's friends's father picked them up.

Plaintiff reported to work the day after the accident and testified that he did 90% of his work that day. Later that day, Plaintiff could not get up because his neck, back and both knees were hurting. His sister picked him up from work because he was unable to drive. Plaintiff went to Beaumont Hospital for treatment. He complained that both knees were bothering him, the left knee more than the right knee. Plaintiff stated that he was given steel support with velcro for his knees and that he wore this until he saw Dr. Kenneth Jurist. Plaintiff was not admitted and was sent home that same day.

Plaintiff then began experiencing problems with his head and jaw. He also experienced

pain in his upper back and all over his neck. His neck would hurt when he moved it and he described it as a tight kind of pain. Plaintiff testified that he also experienced tingling sensations in his arms.

On April 1, 1991, Plaintiff went to see Dr. Jurist. Plaintiff told the doctor about problems with his neck, back and knees. Plaintiff admitted that he did see Dr. Jurist one year before the accident, on February 16, 1990, because he had problems with his knees resulting from a skiing accident which occurred while he was in junior high four years prior to seeing Dr. Jurist. Plaintiff testified that he did ski between the skiing accident and when he saw Dr. Jurist on February 16, 1990. Dr. Jurist gave him a knee brace at that time and he wore the knee brace while skiing. Plaintiff stated that he engaged in various sports. He skied often, about five to six times per season. Plaintiff also played basketball, racquetball, baseball and waterskiing.

Dr. Jurist's April 1, 1991 examination of Plaintiff revealed:

> His examination shows decreased cervical spine motion in all directions. There is some paracervical spine tenderness, none in the midline. He has a normal neurologic examination in all the motor groups, including motor and sensory. His reflexes are symmetric. His knee examination the left side shows a full arc of motion. There is a little hyperextension in both right and left. He has a mild effusion, a little patellar irritability but no prepatellar fullness. His ligaments are stable. There is mild pain with internal and external rotation, but again, there is good stability in all planes. His right knee has a virtually normal examination with only minimal soreness, nothing specific, no swelling, a full arc of motion, a stable ligament examination, no meniscal signs. (Plaintiff's Ex. B).

Dr. Jurist gave Plaintiff a prescription and Plaintiff was then referred to Dr. Joseph Femminineo for further testing and x-rays. The plane x-rays taken by Dr. Femminineo were within normal limits. (Plaintiff's Ex. C). Dr. Femminineo's examination revealed:

> On physical examination, I see an alert, oriented, pleasant, white male who appears in no obvious distress. There is normal hip, knee and ankle alignment. There is no gross paraspinous abnormality and there is no evidence of kyphosis or scoliosis. Neck range of motion was completely normal; forward flexion, extension was normal, rotation was within normal limits. The patient has point tenderness over the cervical, paraspinal and trapezial areas bilaterally. Manual muscle testing is symmetric in the upper and lower extremities. Reflexes are symmetric. No long tract signs or pathologic signs are noted. The rest of the exam is unremarkable. (Plaintiff's Ex. C).

Plaintiff testified that after seeing Dr. Femminineo he continued to take medicine which did not help. Plaintiff stated that physical therapy was prescribed. He attended the therapy for a couple of months but he still had problems. These problems affected his social life and he could not play sports. Plaintiff saw Dr. Jurist again on May 8, 1991, July 3, 1991, and August 12, 1991. Plaintiff stopped his treatment at the end of the summer of 1991. In a letter dated September 28, 1991 to Continental Loss Adjusting Services, Inc., Dr. Jurist indicated to the claims adjuster:

> This patient continues to have pain but I do not believe there was any need for operative intervention and I suspect that this will settle down over time. His pain is presently not cause and effect related to the auto accident, since there was a pre-existing condition which may have been exacerbated by his injury. (Plaintiff's Ex. B).

Plaintiff testified that when he stopped seeing Dr. Jurist, he began seeing Dr. W.E. Barry Mayo. Dr. Mayo's examination of Plaintiff on October 18, 1991 found:

> There is well localized tenderness over the anteromedial aspect of the left knee, good motion, no effusion, it is stable. McMurray, Lachman and drawer tests are negative. The MRI report showed some abnormalities of the meniscus. (Plaintiff's Ex. G).

Dr. Mayo recommended an arthroscopic examination. On October 30, 1991, Plaintiff had an arthroscopy on his left knee at Madison Community Hospital. (Plaintiff's Ex. I). Plaintiff continued to see Dr. Mayo on November 5, 1991, November 26, 1991, February 11, 1992, July

30, 1993, and August 19, 1994. On September 8, 1994, Plaintiff underwent arthroscopy on his right knee at William Beaumont Hospital-Royal Oak. Plaintiff missed a few days of work immediately following the October 1991 and September 1994 arthroscopic surgeries.

At his deposition, Dr. Mayo, testified that he had first examined Plaintiff on April 18, 1986 when he had fallen off a skateboard. Plaintiff was diagnosed with a minimally displaced fracture of one of the bones in his wrist. Dr. Mayo did not have contact with or treat Plaintiff between that visit and the subsequent to the automobile accident until Plaintiff went to see him on October 18, 1991. Dr. Mayo testified that his examination revealed:

> He had well-localized tenderness over the portion of the left knee. He had good motion, there was no effusion and the joint was stable. And some of the other tests for stability were also negative. He had already had some other tests and some reports were available. My impression at that time was he probably had damaged the medial meniscus; and because of the increasing pain and the long period of pain, arthroscopic examination of his knee was recommended. (4/27/95 Mayo dep., p. 7).

Dr. Mayo indicated the plica existed prior to the accident. (4/27/95 Mayo dep., p. 9). The plica on Plaintiff's left knee was removed during the arthroscopic examination/surgery on October 30, 1991.

In August 1994, Dr. Mayo testified that Plaintiff complained of pain in both knees but the severity was more in the right knee. Dr. Mayo recommended arthroscopic surgery for Plaintiff's right knee because he suspected that he had a meniscal tear and possibly plica. The plica was removed during the surgery. (4/27/95 Mayo dep., p. 14). Dr. Mayo opined that the automobile accident traumatized the plica on Plaintiff's left knee to the extent that it became symptomatic and required arthroscopic surgery for its excision and that favoring the left knee because of the

pain during the recovery period placed an additional load on the right knee which may have been an aggravating factor causing plica on Plaintiff's right knee. (4/27/95 May dep., p. 17).

On cross-examination, Dr. Mayo indicated that Plaintiff had not informed him of the preexisting injury in his left knee resulting from a ski injury. (4/27/95 Mayo dep., p. 27). At the time of his examination of Plaintiff, Dr. Mayo indicated that he ruled out fracture as a diagnosis of Plaintiff's knee. Dr. Mayo also found that Plaintiff had a normal range of motion, no stiffness, no swelling, no instability, no dislocation and no abnormal movements. (4/27/95 Mayo dep., p. 28). Dr. Mayo further testified that plica was congenital in nature. (4/27/95 Mayo dep., p. 36). When asked whether he knew plica to cause or be responsible for career threatening injuries in athletes like the ACL injuries, Dr. Mayo responded that did not know of any such career threatening injuries because plica did not have the same magnitude as an ACL injury. (4/27/95 Mayo dep., p. 38-39). Dr. Mayo also testified on cross-examination that he could not say with any degree of certainty that there was any cause and effect between the accident and Plaintiff's surgery on his right knee. (4/27/95 Mayo dep., p. 45).

Plaintiff testified that he had no visits with the doctor in 1995 but he realized that more surgery is needed. He stated that he will forego additional surgery until he cannot tolerate the pain. Plaintiff testified that he is in a lot of pain now. Plaintiff testified that the pain is more in his right knee than his left knee. He stated that he cannot kneel but he can squat with pain. Since the accident Plaintiff has not played any racquetball nor done any waterskiing. He has tried to play tennis and basketball but his knees started to give out on him. Plaintiff has also attempted to rollerblade and ride a bicycle but was in too much pain. Plaintiff further stated that he does swim a couple times a week during the summer months. He also fell a couple of times while

moving boxes into a new house. Plaintiff testified that he is not getting any better. Plaintiff testified that while at work, he stands and sits as best he can. He stated that he has a limited sex life because of the problems with his knees and back but he is not impotent.

Plaintiff's girlfriend, Melissa Burns, testified that Plaintiff has no problems when he is walking but he does not engage in athletic activities. She stated that he does not complaint of the pain but she can tell by his actions and the look on his face that he is in continuous pain. Ms. Burns further testified that Plaintiff has problems sleeping.

Mr. Warren Flagg, President of Seal Jet, testified that Plaintiff is a good and knowledgeable employee. Mr. Flagg further testified that Plaintiff appears to have physical problems and limps. He indicated that Plaintiff was absent from work for a few days after his second surgery.

Dr. Richard Krugel performed an independent orthopedic medical examination on Plaintiff on January 26, 1995. Upon a review of Plaintiff's x-rays, medical records, patient history and after conducting a full orthopedic examination, Dr. Krugel found no objective evidence to substantiate Plaintiff's problems with his knees, back or neck. (Krugel dep., pp. 2-3).

II. ANALYSIS:

Both parties agree that the substantive law of Michigan is to be applied in this action. 28 U.S.C. § 1346(b). As indicated above, the issue of negligence is stipulated to by the parties. The sole factual issue before the Court is the amount of damages. M.C.L.A. § 500.3135 states in pertinent part:

> (1) A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death,

> serious impairment of body function, or permanent serious disfigurement.

In order to recover noneconomic damages for an injury caused by an automobile accident, a plaintiff must show that he suffered a serious impairment of a bodily function. DiFranco v. Pickard, 427 Mich. 32, 40 (1986); M.C.L.A. 500.3135(1). "Serious impairment of body function" need not be impairment of entire body function or of an important body function. The threshold requires inquiry into: 1) what body function, if any, was impaired because of injuries sustained in a motor vehicle accident, and 2) whether the impairment was serious. Auto Club Ins. Ass'n v. Hill, 431 Mich. 449, 452, note 2 (1988). First, the focus of the body function inquiry is not on the injuries, but rather, on how the injuries affected a particular body function. Id. Secondly, to determine whether the impairment was serious, several factors should be considered: the extent of the impairment, the particular body function impaired, the length of time the impairment lasted, the treatment required to correct the impairment, and any other relevant factors. Id.

Based upon the evidence presented at trial, the Court finds that Plaintiff failed to establish that he suffered a serious impairment of a body function. Plaintiff did testify that he injured his knees, neck and back as a result of the accident. However, Plaintiff has failed to establish that the injuries affected a particular body function.

Dr. Jurist, one of Plaintiff's treating physicians after the accident, noted that Plaintiff's left knee had some tenderness and a small amount of swelling but that the knee had a full range of motion. Plaintiff's right knee had a virtually normal examination. Subsequent examinations by Dr. Jurist revealed nothing mechanically wrong with Plaintiff's knee and could not find any medical evidence to support the pain Plaintiff was experiencing on his knee.

Dr. Mayo, Plaintiff's second treating physician, did find plica on Plaintiff's left knee

which was excised on October 1991 during an arthroscopy. Dr. Mayo did indicate that the plica existed prior to the accident and could be congenital. Three years later, in September 1994, Dr. Mayo performed a second arthroscopy on Plaintiff's right knee. Again, Dr. Mayo excised plica. The independent medical examination by Dr. Krugle revealed no objective evidence to substantiate Plaintiff's knee, back or neck problems.

Plaintiff testified that he is in a lot of pain and that he cannot kneel but he can squat with pain. He further testified that since the accident, he has attempted to engage in various sport activities but is still able to swim a couple times a week during the summer months. Plaintiff testified that while at work he is able to stand and sit. Ms. Burns, Plaintiff's girlfriend, testified that he has no problems when he is walking but appears to be in pain by the look on his face. She further testified that he has problems sleeping. Plaintiff's boss, Mr. Flagg, testified that Plaintiff has only missed a few days of work since the accident and is a good employee. Mr. Flagg stated that Plaintiff appears to have some physical problems and limps on occasion.

Other than the existence of plica which were excised by Dr. Mayo, there is no medical evidence to support Plaintiff's claim of pain in his knees. The Court further finds that there is testimony that Plaintiff does not have a problem with walking and has only missed a few days of work after his two arthroscopy surgeries. Plaintiff testified that he is able to sit, stand and walk while at work.

As to the issue of whether the impairment was serious, the Court finds that Plaintiff has failed to establish this criteria. Again, other than plica which were excised by Dr. Mayo, there is no medical evidence that Plaintiff's knees are impaired. Plaintiff has also failed to establish that a particular body function was impaired. The medical evidence also does not substantiate

the length of time the impairment lasted. The treatment required to correct the impairment, the plica, was performed by Dr. Mayo. Dr. Mayo performed arthroscopy on Plaintiff's left knee in October 1991 and his right knee in September 1994. Dr. Mayo's post-op check after the October 1991 surgery was satisfactory. He found significant improvement in Plaintiff's symptoms with the exception of some swelling and residual symptoms from the recent surgery. After the September 1994 surgery, Dr. Mayo's post-op check was also satisfactory. He found minimal swelling, good motion, no effusion and mild tenderness along the medial side of the patella. Dr. Mayo indicated in his record that the patient felt that the recent right knee operation has caused Plaintiff to be much more comfortable than the left knee operation which has been problematic over a long period of time. Plaintiff testified that he did not see any doctors in 1995.

III. CONCLUSION:

Based on the above, the Court finds that Plaintiff has not met the threshold requirement under M.C.L.A. § 500.3135(1) in order to recover noneconomic damages.

Accordingly,

IT IS ORDERED that Plaintiff recover no noneconomic damages from Defendant.

DENISE PAGE HOOD
United States District Judge

DATED: MAR 29 1996

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS DARIS, II,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant

_____/

Case No. 94-CV-71185-DT

HONORABLE DENISE PAGE HOOD

JUDGMENT

This action came on for trial before the Court, Honorable Denise Page Hood, District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered in the Memorandum Opinion and Order entered this date,

Accordingly, judgment is entered in favor of Defendant.

JOHN P. MAYER
CLERK OF COURT

By: _____
Deputy Clerk

Approved:

DENISE PAGE HOOD
United States District Judge

DATED: MAR 29 1996

Detroit, Michigan

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❖ EASTERN DISTRICT

❖ CONTINUED FROM PAGE 9A

gaining agreement, and (2) whether the right claimed by the plaintiff is created by the collective bargaining agreement or by state law."

Plaintiff's "claim for false arrest under Michigan law is a classic example of a tort claim based upon 'non-negotiable' state law rights independent of rights established between the parties by the CBA.... The right to be free from arrest or imprisonment unsupported by probable cause and the factors defining the scope of this right derive from an independent body of state law, not from the CBA between [defendant-store] and the Union." The false arrest claim is not pre-empted by the LMRA. Plaintiff's motion to remand this claim to state court is granted.

Other Claims Pre-Empted

The intentional infliction of emotional distress claim implicates the CBA because the issue of whether defendants' conduct was outrageous "depends upon whether the defendants' actions contravened the collective bargaining agreement."

As to the negligent hiring and supervision claim, any duty regarding this claim would arise "solely from the collective bargaining agreement" and would require interpretation of the CBA.

Plaintiff's claim for tortious interference with contractual relations is also pre-empted by the LMRA. Plaintiff claims she had a just-cause employment contract. But any such contract would arise from the CBA and necessarily require interpretation of the CBA.

The respondeat superior claim would require this court to "analyze the relationship between the employer and the alleged employee tortfeasor, which is defined by a collective bargaining agreement and are subject to a six-month statute of limitations. In this case, the statute began to run the day after the 90-day period the union had under the CBA to seek arbitration of plaintiff's claim. Plaintiff did not sue until almost a year later.

The false imprisonment claim is remanded to state court. The remaining claims are dismissed.

Weatherholt v. Meijer, Inc., et al. (Lawyers Weekly No. **24294** - 17 pages) (Gadola, J.).

Summary by EW.

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Negligence

Slip and Fall in Airplane - Insufficient Evidence of Causation

Where plaintiff could not identify any defect in an airplane that caused her to slip and fall in the plane's aisle, the case will be dismissed because plaintiff cannot prove causation.

In her deposition, plaintiff "explains that she was injured when she attempted to move from her aisle seat into the aisle to permit another passenger to walk past her." Plaintiff said that, "I stood up and turned my left and my whole — my body was already in the movement to go into the aisleway and I couldn't move my leg, my foot, and my knee just came apart."

Plaintiff says that after the accident, she discovered a metal carpet strip that was raised on one side.

Two flight attendants on plaintiff's flight said there was no carpet stripping in the area but instead, there was emergency exit strip lighting. Defendant argues that plaintiff has not shown that either the alleged carpet strip or the emergency lights caused plaintiff's fall. Plaintiff, when asked whether she felt her foot hit something as she was moving, re-

"Because Plaintiff does not state in her deposition that she felt herself trip over something, she essentially admits that she does not know if she tripped over anything at all.... Plaintiff merely assumes that because she observed the carpet strip to be in a raised position after her fall, it must have caused her accident. This speculation is insufficient to establish a genuine issue of material fact regarding causation."

Defendant-airline is granted summary judgment.

Proud v. Northwest Airlines. (Lawyers Weekly No. **24341** - 10 pages) (Friedman, J.).

Summary by EW.

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No-Fault

Non-Economic Damages - Government Employee

Where plaintiff suffered serious bodily injury due to a back and neck injury which occurred when his car was hit by a United States Postal Service vehicle, plaintiff is entitled to non-economic damages.

Plaintiff's car was hit by a United States Postal Service vehicle. Plaintiff's car incurred $1,800 worth of damages. Plaintiff injured his back and neck. He was off work about four months.

Plaintiff sued the United States under the Federal Tort Claims Act (FTCA). A trial was conducted in this matter.

Government Liability

The court finds that the postal carrier illegally operated the postal vehicle. The carrier admitted that he was illegally parked and that he did not see plaintiff's car when he pulled out. Neither party presented evidence that plaintiff's vehicle was travelling at an excessive speed. The government argues that plaintiff should have seen the postal truck pulling out.

No-Fault

Non-Economic Damages - No Serious Impairment

Where plaintiff-passenger was injured when defendant-government's vehicle hit his car, he is not entitled to non-economic damages because he has failed to establish that he suffered a serious impairment of body function.

Plaintiff was a passenger in a vehicle which was hit by a United States Immigration and Naturalization employee. Defendant has conceded the issue of negligence. The only matter before this court is the issue of damages.

Plaintiff complains of pain in his knees. He underwent arthroscopic surgery but claims the pain persists. Plaintiff acknowledges that he had previously injured the left knee in a skiing accident.

Under MCL 500.3135, a person may only recover non-economic damages if the person can show that he suffered a "'serious impairment of body function, or permanent serious disfigurement.'"

The evidence presented indicates that plaintiff has failed to establish that he has suffered a serious impairment of a body function. "Plaintiff did testify that he injured his knees, neck and back as a result of the accident. However, Plaintiff has failed to establish that the injuries affected a particular body function."

Although plaintiff underwent two surgeries, there is "no objective evidence to substantiate Plaintiff's knee, back or neck problems. ...

"As to the issue of whether the impairment was serious, the Court finds that Plaintiff had failed to establish this criteria. ... Plaintiff has also failed to establish that a particular body function was impaired. The medical evidence also does not substantiate the length of time the impairment lasted." Also, the treatment plaintiff received significantly improved his symptoms.

alleged employee [illegible]
fined by a collective bargaining agreement." This claim is pre-empted as well.

The claims pre-empted by the LMRA

hit something as she was [illegible]
plied, "I don't know that I was cognizant of that. All I know is I started falling....

The court disagrees. [illegible]
should have seen the postal vehicle, "it was reasonable for the plaintiff to assume that the Postal truck would not back into his lane as he attempted to pass. Accordingly, the Court finds that plaintiff was not negligent, and Michigan's comparative negligence law is inapplicable."

The government disputed the force of impact. The government does not argue that plaintiff's car was damaged. The government argues that the damage was not caused in this collision. The court disagrees. Plaintiff's vehicle was damaged to an extent that would demonstrate a significant impact. Also, there is no evidence to discredit plaintiff's testimony that his car was not damaged prior to the collision. Plaintiff's testimony was straightforward, non-evasive and credible. "While plaintiff did not recollect certain details and events with perfect clarity, the Court found nothing to indicate a character for untruthfulness."

Serious Bodily Impairment

As to plaintiff's injuries, there was adequate support for plaintiff's claim that he suffered a limitation in his range of movement in his neck and back. "Based upon all of the medical testimony presented at trial, as well as the Court's evaluation of the impact of the collision and plaintiff's credibility, the Court finds that plaintiff suffered a serious impairment of body function as a result of the accident. The Court considers the movement of plaintiff's neck and back to be a body function. From the time of the accident through April 23, 1994, when plaintiff returned to work, plaintiff suffered a limited range of motion in his neck and back. Although plaintiff's back injury was relatively mild and treatable with rather non-invasive methods, the Court's focus is properly on plaintiff's reduced function. An impaired function of the neck and back is a uniquely crippling condition; greatly reducing one's quality of life. As such, the Court considers plaintiff's impairment to be 'serious' for the purposes of the No-Fault Act."

The court finds that plaintiff is entitled to damages for pain and suffering in the amount of $7,500.

Neal v. United States. (Lawyers Weekly No. 24346 - 13 pages) (Zatkoff, J.).

Summary by KMP.

tiff has not met the threshold requir[e]ment under M.C.L.A. sec. 500.3134(1) in order to recover noneconomic dam[a]ges."

Daris v. United States. (Lawye[rs] Weekly No. 24348 - 11 pages) (Hood, J.

Summary by ML.

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Securities

Failure to Investigate - No Private Cause of Action

Where plaintiff-brokers sued def[en]dant-securities association for failing review the accuracy of certain forms fore filing them, plaintiff' claims are [dis]missed because there is no private ca[use] of action against defendant for allege[d] violating its own rules.

Defendant-National Association of [Se]curities Dealers (NASD) is regist[ered] with the Securities and Exchange C[om]mission (SEC) as a national secur[ities] association. Defendant is required t[o] tablish standards for licensing and r[egis]tration of securities professionals. I[n] ing so, it uses two forms: U-4 and U

Background

Plaintiff-brokers are former emp[loy]ees of Prudential Securities, Inc. Pru[den]tial was accused of defrauding its i[nves]tors. Under NASD's rules, "Prude[n]tial was required to amend its U-4 and [U-5] forms if its registered represent[ative] became the subject of a claim of fra[ud] the wrongful taking of property in e[xce]ss of ten thousand dollars." Prudentia[l] these forms for plaintiffs.

Plaintiffs argue that Prudential ' mitted fraud and acts of misrepre[sen]tation in connection with its sales of ests in more than seven hundred l[imi]ted partnerships to investors. They f[ur]ther allege that Prudential purpos[ely] amended the U-4 and U-5 forms to *broker* violations, when, in fact, i[nfor]mation should have been repo[rted] *company* violations. The unde[rly]ing premise of the Plaintiffs' claims the NASD did not comply with i[ts] regulations, in that it failed to revi[ew] investigate the accuracy of the in[for]tion within each report prior to mi[ng]