

In the
United States Court of Appeals
for the Seventh Circuit
Chicago, Illinois

No. 06-2046

Zena D. Crenshaw,)	
<i>Plaintiff- Appellant,</i>)	Appeal from the
)	U. S. District Court for the
-vs-)	Northern District of Indiana
)	at Hammond
Joan S. Antokol; Ralph A. Cohen; Bonnie)	
L. Gallivan; Anita M. Hodgson; ICE)	
MILLER DONADIO & RYAN;)	Cause No. 3:04-CV-00182-PPS/APR
HOFFMANN-LaROCHE, INC.; Julie)	
McMurray; William P. Wooden;)	
WOODEN & McLAUGHLIN, LLP;)	The Honorable Philip P. Simon, Judge.
Robert F. Parker; Rehana Adat; BANK)	
ONE TRUST COMPANY, N.A.; James)	
W. Martin; Mary A. Paschen, and)	
SPANGLER JENNINGS &)	
DOUGHERTY, P.C.,)	
<i>Defendants-Appellees.</i>)	

BRIEF OF THE APPELLANT

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**Bar admission limited to the
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Appellate Court No: 06-2046

Short Caption: Zena D. Crenshaw -vs- Joan S. Antokol, *et al.*

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Zena D. Crenshaw to the extent she represents the proposed class being victims of the apparent scheme or artifice to defraud within the meaning of 18 U.S.C. §1346 (*depriving another of the intangible right of honest services*), that was the subject of this action below.

- (2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Furman Law Firm

- (3) If the party or amicus is a corporation:

- i) Identify all its parent corporations, if any; and
- ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:
N/A

Attorney's Signature: *Zena D. Crenshaw*
Attorney's Printed Name: Zena D. Crenshaw

Date: May 8, 2006

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes**

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Roger Williams University Law Review, Vol. 9 No. 2 pp. 351-97
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Jurisdictional Statement

Jurisdiction of the district court is based on the United States Constitution, to wit: Article III, Section 2 (*case and controversy arising under the Constitution and laws of the United States*); Article VI (*the Supremacy Clause - the Constitution of the United States and laws enacted pursuant thereto as the Supreme Law of the Land*); the Sixth Amendment (*right to desired counsel*); the Ninth Amendment (*rights retained by the people*); the due process and equal protection provisions of the Fourteenth Amendment; and various jurisdictional statutes, to wit: 28 U.S.C. §§1331 (*federal question*), 1343(a)(3)&(4) (*civil rights*), and 2201 (*Federal Declaratory Judgment Act*).

Jurisdiction is conferred on the appellate court pursuant to 28 U.S.C. §1291 as the date of final judgment sought to be reviewed is **March 9, 2006** with all orders simultaneously appealed being entered on that date or earlier. NOTICE OF APPEAL was filed by the plaintiff on **April 7, 2006**. A CORRECTED Notice of Appeal was filed on **April 10, 2006** *nunc pro tunc* to reflect March 29, 2005 (instead of October 29, 2005) as the date of an order among those appealed. This appeal is from a final judgment entered with prejudice as to all defendants except Mary Paschen; an Order denying in part plaintiff's motion for an order to confirm or facilitate service on defendant Mary Paschen; and various preceding Orders.

Statement of Issues

1. Whether the trial court justifiably asserts difficulty “. . . deciphering exactly what claims Crenshaw is bringing” when they have been extensively briefed and made the subject of substantive rulings over the nearly four years since this litigation began;
2. Whether the trial court essentially prescribed *de facto* “standards of accepted practice” in this case, clearly encompassing more than a determination that “. . . Crenshaw's entire case is made up of nothing more than being on the losing end of several lawsuits . . .”;
3. Whether any court with the flexibility to delay just short of a year, dismissing a defendant

on “the reasoning set forth” in its previous order could have accommodated a second amendment of the underlying complaint, requested nearly two (2) years before the case was concluded;

4. Whether it is clearly an abuse of discretion to spare Mary Paschen this lawsuit, courtesy of unresponsive trial judges; a defendant unwilling to volunteer her whereabouts and thereby strengthen the prospect of its liability being corroborated; and the plaintiff who dared merely seeking court orders to bring the defendant within the court’s jurisdiction.

Statement of the Case

This is a one count complaint against fifteen (15) different defendants and various unnamed, co-conspirators under 42 U.S.C. §1983. *1st Amd Cmplnt, DE# 86, App pp 1-32*. It alleges a tentacular scheme to, *inter alia*, deprive the appellant as plaintiff of fair and impartial judges and quasi-judicial officials, utilizing mail and wire services. *See, 1st Amd Cmplnt, DE# 86, App pp 1-32*. The matter was transferred¹ to the U. S. District Court for Northern District of Indiana from the U. S. District Court for the District of Columbia as of October 20, 2003. *See, Crenshaw v. Antokol et al., 298 F.Supp.2d 37 (D.D.C. 2003)*. It was filed on November 8, 2002 and originally alleged specific instances of mail fraud as well as a count for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO). *See, Id.*

On June 14, 2004, the appellant as plaintiff moved for an extension of time to file her first amended complaint. *Pltf’s Ver. Mot. for Ext. of Deadlines, DE# 82*. As that motion was denied, the plaintiff’s first amended complaint was deemed filed on June 14, 2004 and she sought leave to file a second amended complaint on August 16, 2004. *See, 6/30/04 Order, DE#85; and Pltf’s Mot. For Leave to file 2nd Amd Cmplnt, DE# 103*. In addition, the plaintiff

¹The appellant as plaintiff unsuccessfully sought to avert this transfer by petitioning for a writ of mandamus before the U. S. Court of Appeals for the District of Columbia. *See, In re Zena D. Crenshaw, No. 03-5276* before the U. S. Court of Appeals for the District of Columbia.

moved “. . . for Recusal of All Regularly Sitting Judges for the U. S. District Court for the Northern and Southern Districts of Indiana to Allow for the Assignment of a District Judge Otherwise Within the 7th Circuit to Sit by Designation” on August 30, 2004. *See, Ptf’s 455(a) Mtn, DE# 115.*

The plaintiff’s separate motions for recusal and leave to amend were denied orally on October 6, 2004. *See, DE# 127.* On October 22, 2004, she unsuccessfully² petitioned this Court for “(a) writ of mandamus to order the recusal of all justices, judges and magistrates, regularly sitting for the U.S. District Court for the Northern and Southern Districts of Indiana to allow for the assignment of a district judge otherwise within the Seventh Circuit to preside over trial below by designation.” *See, In re Zena D. Crenshaw*, No. 04-3712 before the U. S. Court of Appeals for the Seventh Circuit. On March 8, 2006, the trial court recounted that it “. . . entered an order on March 29, 2005 dismissing all Defendants in this case except Robert Parker and Mary Paschen”. *3/8/06 Order, DE#175, p 1, App p 48.* “Because the Court (found) that the reasoning set forth in its March 29, 2005 Order also applies to Defendant Parker . . .”, it dismissed him from this action with prejudice on March 8, 2006. *3/8/06 Order, DE# 175, p 6, App p 53.*

The trial court determined that “. . . Paschen had not worked at Bank One for nearly a year when Plaintiff sent the complaint and summons by certified mail to Bank One . . .” *3/8/06 Order, DE# 175, p 10, App p 57*, and that “. . . Plaintiff knew in at least January of 2003 that Paschen was no longer employed at Bank One.” *3/8/06 Order, DE# 175, p 12, App p 59.* As the plaintiff “. . . turned to the district courts for help in finding Paschen without looking into any

²The petition for mandamus was denied in less than a week. *See, 10/28/04 Order, In re Zena D. Crenshaw*, No. 04-3712 before the U. S. Court of Appeals for the Seventh Circuit.

other avenues that may have yielded Paschen's current residence or business address . . . , (t)his sequence of events (reportedly) does not reflect . . . 'reasonable diligence' to obtain service and therefore does not provide a valid reason for delay". *3/8/06 Order, DE# 175, p 14, App p 61.*

The "invitation" was declined for ". . . a court order requiring Bank One to provide Paschen's last known home and business mailing addresses." *3/8/06 Order, DE# 175, p 12, App p 59.*

Statement of Facts

On June 14, 2004, the appellant as plaintiff moved for an extension of time to file her first amended complaint, primarily on the following grounds:

. . .

- (1) The plaintiff was extended up to and including June 14, 2004 to file her first amended complaint or respond to the outstanding motions to dismiss in the above captioned matter;
- (2) The defendants were allowed up to and including July 2, 2004 to respond to any amended complaint the plaintiff would accordingly file;
- (3) The plaintiff has consulted with prospective counsel as they endeavor to adequately familiarize themselves with the many, many facts relevant to this case;
- (4) Based on their input to date, she developed the proposed pleading attached hereto and incorporated herein as "Proposed Pleading Exhibit A";
- (5) On June 14, 2004, that 32 page document was submitted for review to plaintiff's prospective counsel who will edit and likely revise the same after additional consultation with the plaintiff;
- (6) That process should be complete, allowing the plaintiff's prospective counsel to formally intervene in this matter by July 30, 2004;
- (7) Allowing the plaintiff up to and including July 30, 2004 to amend her above captioned complaint or otherwise proceed will spare the parties and this Court any duplicative and/or wasteful effort that would be attendant to proceeding on what is now Proposed Pleading Exhibit A;

...

Pltf's Ver. Mot. for Ext. of Deadlines, DE# 82.

The trial court denied that motion, noting “(t)his case is over eighteen months old” and that “. . . any further delay will only work to prejudice the defendants and unnecessarily delay (the) proceedings.” *See 6/30/04 Order, DE#85.*

On August 16, 2004, said plaintiff filed a fourteen (14) page motion for leave to file her second amended complaint. *Pltf's Mot. For Leave to file 2nd Amd Cmplt, DE# 103.* Most importantly for present purposes, it notes:

...

- (1) Local Rule of Civil Procedure 23.1 provides that “(i)n any case sought to be maintained as a class action, the complaint shall bear next to its caption the legend ‘Complaint – Class Action.’;”
- (2) Plaintiff inadvertently failed to designate her first amended complaint as a class action in its caption and accordingly seeks to correct that oversight by her proposed, second amended complaint;
- (3) The attached pleading further clarifies that the proposed class is “victims of the apparent scheme or artifice to defraud within the meaning of 18 U.S.C. §1346 (*depriving another of the intangible right of honest services*), that is the subject of this litigation, to the extent the named plaintiff has standing to assert their corresponding rights pursuant to Article III, Section 2 of the United States Constitution”. *See, 2nd Amd Cmplt p 2;*

...

Id. at p 1, ¶¶ 1-3. (footnote omitted).

The plaintiff’s motion for leave to file a second amend complaint was denied orally on October 6, 2004. *See, DE# 127.*

On March 8, 2006, the trial court recounted that it “. . . entered an order on March 29,

2005 dismissing all Defendants in this case except Robert Parker and Mary Paschen”. 3/8/06 Order, DE# 175, p 1, App p 48. The referenced, 2005 order recites that “(o)n November 8, 2002, Crenshaw filed her first complaint in this case in the United States District Court for the District of Columbia . . .” 3/29/05 Order, DE# 150, p 1, App p 33. The District of Columbia proceedings prompted two published, trial court decisions, hinging on considerations of where this case should be prosecuted. See, *Crenshaw v. Antokol et al.*, 238 F.Supp.2d 107 (D.D.C. 2002); and *Crenshaw v. Antokol et al.*, 298 F.Supp.2d 37 (D.D.C. 2003). “In the interest of economy, and because a review of the record . . . (confirmed their correctness, the court below) . . . recite(d) the facts of this case up until the matter was transferred to (Indiana) by quoting a substantial portion of the opinion that caused the transfer”. 3/29/05 Order, DE#150, pp 3-5, App pp 35-37. Nearly two years after that transfer, the U. S. District Court for the Northern District of Indiana at Hammond chided that “. . . the first step in analyzing this case is the rather difficult question of deciphering exactly what claims Crenshaw is bringing.” 3/29/05 Order, DE#150, p 6, App p 38.

Reportedly:

. . .

Crenshaw’s First Amended Complaint suffers from a number of flaws that make dismissing the complaint on Rule 8 grounds appropriate. For starters, it is 32 pages long, has 135 numbered paragraphs, and even includes 7 endnotes. Much of this length is due to the fact that the writing is replete with redundant, often irrelevant assertions. Her claims are not set forth in counts, which is particularly vexing because the confusing nature of the writing itself makes it hard enough to figure out what claims are being asserted against which defendants. For example, as mentioned above, the First Amended Complaint contains many references to violations of the RICO statute, yet Crenshaw stated clearly at oral argument that she was not bringing a RICO claim.

Crenshaw was on notice about these problems with her pleadings, as the

Defendants moved to dismiss her original complaint on Rule 8 grounds, yet her First Amended Complaint did little to rectify them except to reduce its length. After the next round of motions to dismiss were filed, Crenshaw submitted a proposed Second Amended Complaint, but the Court refused to allow her to amend her Complaint again. Looking at the proposed Second Amended Complaint, it is clear that allowing such amendment would have been futile anyways. It does little, if anything, to rectify the Rule 8 deficiencies in her pleadings. In light of this, Plaintiff has had one, and arguably two chances to fix the problems in her complaint that were pointed out to her by opposing counsel. Despite such opportunity, Crenshaw has not complied with the dictates of Rule 8, and her First Amended Complaint can be dismissed with prejudice on those grounds.

...

3/29/05 Order, DE# 150, p 7, App p 39.

Nonetheless, the trial court determined that the plaintiff seeks to establish the defendants' liability under 42 U.S.C. §1983 ". . . by alleging a conspiracy." *3/29/05 Order, DE#150, p 8, App p 40.* It notes "(w)hile there is no requirement in federal cases to plead the facts or elements of a claim, when pleading conspiracy, a plaintiff must still 'indicate the parties, general purpose, and approximate date, so that the defendant has notice of what he is charged with.'" *3/29/05 Order, DE#150, p 9, App p 41.* (internal citation omitted).

According to the trial court:

...

Frankly, Crenshaw's entire case is made up of nothing more than being on the losing end of several lawsuits and bare allegations of joint action and conspiracy. Nothing in the complaint demonstrates the existence of even a general understanding between the defendants to conspire to do anything against Crenshaw. Crenshaw does not attempt to connect the various adverse rulings she received with any specific conduct by the Defendants, and it is even difficult to make out what the broad contours of this alleged conspiracy are or its general purpose. In short, Crenshaw's First Amended Complaint utterly fails to notify the defendants in this case what they are being charged with.

...

3/29/05 Order, DE#150, p 9, App p 41.

Supposedly, “(t)here is nothing in the First Amended Complaint that even remotely connects the Lawyer Defendants to any activity other than the normal conduct any lawyer would pursue in defending their client, conduct which is not actionable.” *3/29/05 Order, DE#150, p 10, App p 42.* (internal citation omitted). So, the trial court concludes nearly three years after this case began that “(i)t is not enough to enable the defendants to prepare a defense or for (the) Court to determine whether the claim is within the ballpark of possibly valid conspiracy claims, the two functions of notice pleading under the federal civil rules.” *3/29/05 Order, DE#150, p 11, App p 43.* (internal citation omitted).

In considering whether this case adequately alleges any abuses of process, the trial court explained:

...

Here, the behavior Crenshaw alleges was not procedurally or substantially improper. Both the First Amended Complaint and her responses to the pending motions to dismiss are devoid of any allegation suggesting that the Defendants used legal process for anything but their intended uses. It is difficult to tell from her filings what legal processes she claims were abused (in fact, it is not even clear that she is still maintaining an abuse of process claim, as her briefs only make passing references to it), but she does not allege that any of the legal processes were used for anything not warranted by their terms, or anything in excess of what was warranted. For example, there is no allegation in the First Amended Complaint that the Lawyer Defendants filed their summary judgment motion for anything other than the end that such motions were designed to accomplish – obtaining summary judgment. In all of her filings, Crenshaw has, at most alleged only an ulterior purpose. She has not met the second prong of the test set forth in cases like *Reichart*. That is, she has not alleged that the Defendants used legal process in a way that was not proper in the normal prosecution of the case. As such, her claims for abuse of process must be dismissed.

...

3/29/05 Order, DE#150, p 12, App p 44.

The trial court subsequently acknowledged that “(t)he lynchpin of Crenshaw’s strategy in this case is her allegation of a wide-ranging §1983 conspiracy involving state and federal judges.”

3/29/05 Order, DE#150, p 13, App p 45. However, the court adds “. . . it appears that Crenshaw has been blinded by her passionate, if mistaken, belief that the system is arrayed against her.”

3/29/05 Order, DE#150, p 14, App p 46.

“Because the Court (found) that the reasoning set forth in its March 29, 2005 Order also applies to Defendant Parker . . .”, it dismissed him from this action with prejudice on March 8,

2006. *3/8/06 Order, DE#175, p 6, App p 53.* As to Mary Paschen, the trial court explained:

. . .

Plaintiff raised the issue of service of process relating to Paschen in three pleadings filed in the District Court for the District of Columbia. First, on January 22, 2003, Plaintiff, in her Verified Application for the Default of Bank One [Doc. 42], noted that Mary Paschen was an employee at Bank One’s Merrillville, Indiana office during the time period relevant to the merits of this litigation. (Pl.’s Application for Default at 3.) However, importantly, she conceded that she ‘has reason to believe’ that Paschen’s employment at Bank One ended in December 2001. (*Id.*) According to Plaintiff, the return receipt of the papers served on Paschen indicated that the complaint and summons were received by Shelley Walker, a Bank One employee, on November 18, 2002. (*Id.*) But she stated that she is ‘unable to confirm or refute [service on Paschen] because of the lack of response by [Bank One] and/or Mary A. Paschen[.]’ (*Id.* at 4.) She therefore requested that the court order Bank One to comply with Indiana Trial Rule 4.16(B) regarding Mary Paschen. (*Id.*)

Second, on March 4, 2003, Plaintiff filed a Verified Motion for Extension of Time for Service of Process in Accord with 18 U.S.C. § 1965(b) [Doc. 36]. In this motion, Plaintiff again stated that she ‘has reason to believe’ that Paschen’s employment at Bank One ended in December 2001. (Pl.’s Mot. For Extension of Time at 3.) She requested the Court to extend the deadline for service of process until May 7, 2003, and to order Defendants ‘to assist with the identification of a current address for Mary A. Paschen and/or [to direct] Bank One Trust Company, N.A. to finalize service as to Ms. Paschen pursuant to Indiana Trial Rule 4.16(B)[.]’

Third, in her Verified Response to the Motion to Dismiss made by several Defendants [Doc. 38], she asked the Court to order all defendants who have appeared 'to cooperate with the plaintiff in identifying a current work or home address' for Mary Paschen. (Pl.'s Resp. Mot. To Dismiss at 16.)

...

3/8/06 Order, DE#175, pp 2-3, App pp 49-50.

"On April 4, 2005, Plaintiff filed (a) Verified Motion for an Order to Confirm or Facilitate Service on Defendant Mary Paschen and Allow Judgment to be Entered for all Defendants. [Doc. 151]." *3/8/06 Order, DE#175, p 4, App 51.*

According to the trial court, "Plaintiff . . . states that she has 'reason to believe that Paschen's employment with Bank One may have ended in December of 2001, but is uncertain of Paschen's exact employment history with Bank One . . ." and ". . . cannot serve Paschen by publication because she does not know in which city, county or state Paschen resides." *3/8/06 Order, DE#175, p 5, App p 52.* The court further reported:

...

As relief, Plaintiff in her Verified Motion requests that the Court either confirm service on Mary Paschen and then dismiss her from the suit with prejudice, or, in the alternative, order former defendant Bank One to provide Paschen's last known home and business mailing addresses, so that Plaintiff can effect service upon Paschen before seeking judgment in Paschen's favor. (*Id.*) Plaintiff also seeks an order requiring Bank One 'to make a report to the Court of its action, if any, pursuant to Indiana Trial Rule 4.16(B) regarding defendant Mary Paschen[.]' (*Id.*)

...

3/8/06 Order, DE#175, p 5, App p 52.

Noting ". . . there is no evidence in the record that Plaintiff in any way attempted to locate Paschen on her own", the trial court concludes her ". . . one failed attempt does not satisfy due process concerns of providing proper notice of a lawsuit." *3/8/06 Order, DE#175, pp 9-10, App*

pp 56-57.

The trial court further determined that “. . . Paschen had not worked at Bank One for nearly a year when Plaintiff sent the complaint and summons by certified mail to Bank One . . .” *3/8/06 Order, DE#175, p 10, App p 57*, and that “. . . Plaintiff knew in at least January of 2003 that Paschen was no longer employed at Bank One.” *3/8/06 Order, DE#175, p 12, App p 59*. As the plaintiff “. . . turned to the district courts for help in finding Paschen without looking into any other avenues that may have yielded Paschen’s current residence or business address”, “(t)his sequence of events (reportedly) does not reflect . . . ‘reasonable diligence’ to obtain service and therefore does not provide a valid reason for delay”. *3/8/06 Order, DE#175, p 14, App p 61*. The “invitation” was declined for “. . . a court order requiring Bank One to provide Paschen’s last known home and business mailing addresses.” *3/8/06 Order, DE#175, p 12, App p 59*.

Summary of Argument

It is troubling that the trial court and defendants essentially “. . . profess understanding (the complaint at issue) and its implications ‘beyond doubt’ . . . , but protest that it ‘. . . does not satisfy the basic pleading requirements of the Federal Rules of Civil Procedure . . .’.” *See, Pltf’s Rsp, 8/30/04, pp 1–4, DE# 114*. Admittedly, the U. S. District Court for the District of Columbia twice noted this case involves “. . . a complicated series of interlocking events and lawsuits.” *See, Crenshaw v. Antokol, et al., 298 F.Supp.2d 37 at 38 (D.D.C. 10/20/03)*. However, it has been briefed through two rounds of multiple motions to dismiss; is profiled by two published, trial court decisions; was presented to the U. S. Court of Appeals for the District of Columbia and this Court on separate petitions for writs of mandamus; circumvented application of the *Rooker-Feldman Doctrine*; and is now on appeal. “If the (defendants need) more information,

(they) can serve a contention interrogatory.” *See, Thomson v. Washington, et al.*, 362 F.3d 969 at 971 (7th Cir. 4/1/04). Moreover, “. . . a defendant can move for a more definite statement under Rule 12(e) before responding” to pleadings with too few or too many facts. *See, Swierkiewicz v. Soreman N.A.*, 534 U.S. 506 at 513 (2002); and Federal Rule of Civil Procedure 12(e).

It seems logical that “. . . testimony concerning . . . ordinary practices in (an) industry may be received to enable the jury to evaluate a defendant’s conduct against the standards of accepted practice . . .”. *Kidder, Peabody & Co., v. IAG International Acceptance Group*, 14 F.Supp. 2d 391 at 401 (U. S. Dist. Ct, S. Dist. of NY). While the Second Circuit reportedly cautioned “. . . trial judges ‘not to allow trials before juries to become battles of paid advocates posing as experts on the respective sides concerning matters of . . . law’,” *Kidder at 401*, the trial court below simply prescribed *de facto* “standards of accepted practice”, concluding such things as “(t)here is nothing in the First Amended Complaint that even remotely connects the Lawyer Defendants to any activity other than the **normal conduct any lawyer would pursue** in defending their client . . .” *3/29/05 Order, DE#150, p 10, App p 42*. (internal citation omitted). (emphasis added); and “(h)ere, **the behavior Crenshaw alleges was not procedurally or substantially improper.**” *3/29/05 Order, DE#150, p 12, App p 44*. (emphasis added). “Whether a party acted with objective reasonableness is (supposedly) a quintessential common law jury question”. *See, Kidder at 404*. It clearly encompasses more than a determination that “. . . Crenshaw’s entire case is made up of nothing more than being on the losing end of several lawsuits . . .” *3/29/05 Order, DE#150, p 9, App p 41*.

The appellant persists with this case, admittedly blinded by her passionate, if mistaken,

belief that “. . . jurors . . . apply . . . law to the facts as they find them, as indeed they should, in fulfillment of the Nation’s legal traditions.” *cf Kidder at 405*. True, “(i)n *Dennis v. Sparks*, 449 U.S. 22, 66 L. Ed. 2d 185 (1980), the United States Supreme Court stated that ‘. . . merely resorting to the courts and being on the winning side of a lawsuit does not make a party a co-conspirator or a joint actor with the judge.’” *Antokol, et al. Dsms Memo p 4, DE# 96*. However, the U.S. Supreme Court also explained:

. . .

(J)udicial rulings alone **almost** never constitute valid basis for a bias or partiality motion. . . . In and of themselves (*i.e., apart from surrounding comments or accompanying opinion*), they cannot possibly show reliance upon an extrajudicial source, and can only in the rarest circumstances evidence the degree of favoritism or antagonism required . . . when no extrajudicial source is involved. **Almost** invariably, they are proper grounds for appeal, not for recusal. Second, opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion **unless** they display a deep-seated favoritism or antagonism that would make fair judgment impossible.

. . .

Liteky v. United States, 510 U.S. 540 at 555 (1994). (emphasis added).

The appellees are on the “winning side” of proceedings in which a “deep-seated . . . antagonism that would make fair judgment impossible” was allegedly displayed towards the appellant. *See, 1st Amd Cmplt pp 1-25, ¶¶ 1-120, App pp 1-25*. They accordingly prospered by various abuses of process that collectively served “. . . to circumvent and retaliate for any challenge the plaintiff waged outside Indiana’s state appellate process of the judgment entered against her in *Sanchez* and insulate from corresponding liability any person within the meaning of 18 U.S.C. §1961(3), conducting or participating in such enterprise’s affairs”. *See, 1st Amd Cmplt pp 1-25, ¶¶ 1-120, App pp 1-25*. “Although a single corrupt proceeding . . . might not be sufficient to warrant an

inference of conspiracy among the participants, numerous cases participated in by the same parties, and all following the same outline or pattern, are sufficient to sustain such an inference.” *See, Braatlien et al., v. United States*, 147 F.2d 888 (8th Cir. 1945). (emphasis added). The absurdity should be clear of suggesting such a phenomena can be apparent to a tenured, Rhode Island law professor, but could not happen in Lake County, Indiana or impact the plaintiff’s case as a matter of law. *cf Roger Williams University Law Review*, Vol. 9 No. 2 pp. 351-97 (6/9/04).

On March 8, 2006, the trial court recounted that it “. . . entered an order on March 29, 2005 dismissing all Defendants in this case except Robert Parker and Mary Paschen”. *3/8/06 Order, DE#175, p 1, App p 48*. “Because the Court (found) that the reasoning set forth in its March 29, 2005 Order also applies to Defendant Parker . . .”, it dismissed him from this action with prejudice on March 8, 2006. *3/8/06 Order, DE#175, p 6, App p 48*. Any court with the flexibility to delay doing so for just short of a year could have accommodated a second amendment of the underlying complaint, requested nearly two (2) years before the case was concluded.

As the plaintiff “. . . turned to the district courts for help in finding Paschen without looking into any other avenues that may have yielded Paschen’s current residence or business address”, “(t)his sequence of events (reportedly) does not reflect . . . ‘reasonable diligence’ to obtain service and therefore does not provide a valid reason for delay”. *3/8/06 Order, DE#175, p 14, App p 61*. The “invitation” was declined for “. . . a court order requiring Bank One to provide Paschen’s last known home and business mailing addresses.” *3/8/06 Order, DE#175, p 12, App p 59*. So she will be spared joining this lawsuit, courtesy of unresponsive trial judges; a defendant unwilling to volunteer her whereabouts and thereby strengthen the prospect of its

liability being corroborated; and the plaintiff who dared merely seeking court orders to bring the defendant within the court's jurisdiction. Noting “. . . there is no evidence in the record that Plaintiff in any way attempted to locate Paschen on her own”, the trial court concludes her “. . . one failed attempt does not satisfy due process concerns of providing proper notice of a lawsuit.”
3/8/06 Order, DE#175, pp 9-10, App pp 56-57.

Argument

- 1. While the trial court and appellees have not acknowledged that this case is plausible, such a contention hardly justifies the trial court's reported difficulty “. . . deciphering exactly what claims Crenshaw is bringing” when they have been extensively briefed and made the subject of substantive rulings over the nearly four years since this litigation began.**

STANDARD OF REVIEW: This Court reviews *de novo* motions for judgment on the pleadings. *Craigs Inc. v. General Electric Capital Corp.*, 12 F.3d 686 (7th Cir 1993).

It is troubling that the trial court and defendants essentially “. . . profess understanding (the complaint at issue) and its implications ‘beyond doubt’ . . . , but protest that it ‘. . . does not satisfy the basic pleading requirements of the Federal Rules of Civil Procedure’” *See, Pltf's Rsp, 8/30/04, pp 1-4, DE# 114.* Admittedly, the U. S. District Court for the District of Columbia twice noted this case involves “. . . a complicated series of interlocking events and lawsuits.” *See, Crenshaw v. Antokol, et al.*, 298 F.Supp.2d 37 at 38 (D.D.C. 10/20/03). However, it has been briefed through two rounds of multiple motions to dismiss; is profiled by two published, trial court decisions; was presented to the U. S. Court of Appeals for the District of Columbia and this Court on separate petitions for writs of mandamus; circumvented application of the *Rooker-Feldman Doctrine*; and is now on appeal. “If the (defendants need) more information, (they) can serve a contention interrogatory.” *See, Thomson v. Washington, et al.*, 362 F.3d 969

at 971 (7th Cir. 4/1/04). Moreover, “. . . a defendant can move for a more definite statement under Rule 12(e) before responding” to pleadings with too few or too many facts. *See, Swierkiewicz v. Soreman N.A.*, 534 U.S. 506 at 513 (2002); and Federal Rule of Civil Procedure 12(e).

This Court, the trial judge, and all parties to this proceeding were told this case “. . . boils down to an account of the plaintiff’s failed attempts to prosecute discrimination charges against a state court judge and their apparent connection to more affirmative losses she suffered through state processes”. *In re Zena D. Crenshaw*, Pet. No.04-3712 before the U.S. Court of Appeals, 7th Circuit (2004), *pp 1-2*. In her related petition of this Court, the appellant as petitioner explained:

. . .

The “corruption” fathomed by this case parallels a recent Law Review article for Roger Williams University School of Law entitled “Culture of Quiescence”. In the article, tenured law professor Carl T. Bogus expresses his “. . . thesis that there is a strongly enforced taboo within the Rhode Island legal culture against criticizing the state’s governmental institutions, particularly its courts.” *Roger Williams University Law Review*, Vol. 9 No. 2 pp. 351-97 at 353 (6/9/04). Professor Bogus reports that “(t)he targets and enforcers of this taboo are one and the same: lawyers and judges themselves.” *Id. at 353*. He explains:

. . .

It is important to note that, with respect to federal district court, three judges . . . and a federal magistrate were involved in enforcing the taboo against criticism. That is nearly half of all of the judicial officers in the district, both active and retired. This is an institutional problem, and that is how it ought to be addressed.

But the problem is not limited to federal district court. This is a problem in the wider professional culture – a culture that equates disagreement with confrontation, institutional criticism with ad hominem attack, and anything that even smacks of personal criticism with contemptuousness.

...

Id. at 391-392.

Bogus implores lawyers “. . . to think carefully before egging judges on to punish critics, even when the criticism has stepped over the line and punishment might be appropriate”, noting that “(c)ourts can take care of themselves”. *Id. at 394.* His concluding remarks reflect that “Rhode Island lawyers live in a culture in which criticism is considered professional treason and punished by both courts and colleagues”. *Id. at 397.*

Obviously some “taboos” preempted the discrimination charges culminating with this case and like professor Bogus, the plaintiff contends their enforcers were primarily “lawyers and judges themselves”. “Egged on” in various ways by the defendants, the effort allegedly evolved into an “. . . apparent scheme or artifice to defraud within the meaning of 18 U.S.C. §1346 (*depriving another of the intangible right of honest services*), tantamount to a *de facto* enterprise within the meaning of 18 U.S.C. §1961(4), to circumvent and retaliate for any challenge the plaintiff waged outside Indiana’s state appellate process of the judgment entered against her in *Sanchez* and insulate from corresponding liability any person within the meaning of 18 U.S.C. §1961(3), conducting or participating in such enterprise’s affairs”. *See, 1st Amd Cmplt, App pp 1-32.* Of course a “. . . scheme or artifice to deprive another of the intangible right of honest services” can embrace mail and wire fraud within the meaning of 18 U.S.C. §§1341 and 1343. *See, U.S. v. Catalfo*, 64 F.3d 1070 at 1077, ftnt 5 (7th Cir. 8/30/95). The U.S. Court of Appeals for the Ninth Circuit explained that “. . . to convict for mail fraud, the jury had to find a scheme to defraud Californians of their right to the judges’ honest services, and a use of the mails in furtherance of that scheme.” *See, U.S. v. Frega*, 179 F.3d 793 at 803 (9th Cir. 6/8/99).

...

Unlike the many cases preceding and precipitating this litigation, it requires simultaneous consideration of “. . . numerous cases participated in by the same parties [i.e. fungible members of a multi-faceted conspiracy] . . .”, to determine whether they follow “. . . the same outline or pattern, . . . sufficient to sustain . . . an inference” of conspiracy. *See, 1st Amd Cmplt, App pp 1-32.*

In re Crenshaw, Pet. No. 04-3712 before the U.S. Court of Appeals, 7th Circuit (2004), pp 2-4.

This case alleges a tentacular scheme to, *inter alia*, deprive the plaintiff of fair and impartial

judges and quasi-judicial officials, utilizing mail and wire services. *See, 1st Amd Cmplt, App pp 1-32.* It initially alleged specific instances of mail fraud and included a count for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO). That count is reserved, subject to further development through discovery. The present complaint under 42 U.S.C. §1983, generally proclaims that “(w)hile the plaintiff has yet to determine **each instance** of mail and wire fraud attendant to the scheme(s), artifice(s) and/or enterprise [alleged], she has reasonable grounds to believe they correspond with a pattern of racketeering activity within the meaning of 18 U.S.C. §1961(5)”. *See, 1st Amd Cmplt, App pp 1-32.* (emphasis added).

Much ado has been made about the plaintiff’s first amended complaint being “. . . 32 pages and 135 paragraphs . . .” *See, Antokol, et al. Dsms Memo, DE# —, p 17;* and *Martin Dsms Memo, DE# 95, p 10.* Well, it targets fifteen (15) different defendants and various un-named, co-conspirators for events dating back to 1997, precipitated by a lawsuit filed on December 1, 1993. *See, 1st Amd Cmplt pp 2-5, ¶¶ 1-21, App pp 2-5.* Certainly a skimpy complaint could not redress such a complicated fact pattern, particularly when the appellees condone “Rule 12(b)(6) . . . as a substitute for a request for a more definite pleading within the meaning of Fed. R. Civ. P. 8.” *cf Clark v. AMOCO Production Co., 794 F.2d 967 at 970 (5th Cir. 7/18/86).*

Circuit Judge Ripple acknowledges that “(a) litany of particularized facts might be appropriate if the purpose of the complaint were to establish the plausibility of the plaintiff’s allegations.” *See, Walker v. Thompson, et al., 288 F.3d 1005 at 1011 (7th Cir. 5/1/02).* Of course the trial court and appellees have not acknowledged that this case is plausible. Such a contention hardly justifies the trial court’s reported difficulty “. . . deciphering exactly what claims Crenshaw is bringing” when they have been extensively briefed and made the subject of

substantive rulings over the nearly four (4) years since this litigation began. *3/29/05 Order, DE#150, p 6, App p 38.*

2. **The trial court essentially prescribed *de facto* “standards of accepted practice” in this case, clearly encompassing more than a determination that “. . . Crenshaw’s entire case is made up of nothing more than being on the losing end of several lawsuits . . .”**

STANDARD OF REVIEW: This Court reviews “. . . a district court’s grant of a motion to dismiss *de novo*”. *Flannery v. Recording Industry Assn. of America*, 354 F3d 632 (7th Cir. 2004).

According to the trial court:

. . .

Frankly, Crenshaw’s entire case is made up of **nothing more** than being on the losing end of several lawsuits and bare allegations of joint action and conspiracy. **Nothing** in the complaint demonstrates the existence of even a general understanding between the defendants to conspire to do anything against Crenshaw. Crenshaw does not attempt to connect the various adverse rulings she received with any specific conduct by the Defendants, and it is even difficult to make out what the broad contours of this alleged conspiracy are or its general purpose. In short, Crenshaw’s First Amended Complaint utterly fails to notify the defendants in this case what they are being charged with.

. . .

3/29/05 Order, DE#150, p 9, App p 41. (emphasis added).

Supposedly, “(t)here is nothing in the First Amended Complaint that even remotely connects the Lawyer Defendants to any activity other than the **normal conduct any lawyer would pursue** in defending their client, conduct which is not actionable.” *3/29/05 Order, DE#150, p 10, App p 42.* (internal citation omitted). (emphasis added). In considering whether this case adequately alleges any abuses of process, the trial court explained:

. . .

Here, **the behavior Crenshaw alleges was not procedurally or substantially improper.** Both the First Amended Complaint and her responses to the pending motions to dismiss are devoid of any allegation suggesting that the Defendants used legal process for anything but their intended uses. It is difficult to tell from her filings what legal processes she claims were abused (in fact, it is not even clear that she is still maintaining an abuse of process claim, as her briefs only make passing references to it), but she does not allege that any of the legal processes were used for anything not warranted by their terms, or anything in excess of what was warranted. For example, there is no allegation in the First Amended Complaint that the Lawyer Defendants filed their summary judgment motion for anything other than the end that such motions were designed to accomplish – obtaining summary judgment. In all of her filings, Crenshaw has, at most alleged only an ulterior purpose. She has not met the second prong of the test set forth in cases like *Reichart*. That is, she has not alleged that the Defendants used legal process in a way that was not proper in the normal prosecution of the case. As such, her claims for abuse of process must be dismissed.

...

3/29/05 Order, DE#150, p 12, App p 44. (emphasis added).

These findings go well beyond a consideration of “. . . whether the (present) claim is within the ballpark of possibly valid conspiracy claims . . .” *cf 3/29/05 Order, DE#150, p 11, App p 45.*

Recently at issue before the U. S. District Court for the District of Maine was “. . . how the defendant lawyers carried out their duties to the plaintiffs . . .” *See, Glenwood Farms, Inc. v. Garve Ivey, et al., 397 F.Supp2d 46 (U. S. Dist. Ct, Dist. of Maine 8/23/05).* “Evaluation of this question . . .” was deferred at least in part to a lawyer/expert witness and described as “. . . a matter for the parties to argue to the factfinder”. *See, Glenwood Farms at 48.* More illuminating is a 1998 decision by the U. S. District Court for the Southern District of New York. *See, Kidder, Peabody & Co., v. IAG International Acceptance Group, 14 F.Supp. 2d 391 (U. S. Dist. Ct, S. Dist. of NY).*

The *Kidder Court* considered “. . . whether a party, defending itself at a jury trial against

claims of abuse of the process of attachment and malicious prosecution, may offer expert opinion testimony from a professor of law with respect to the propriety of its conduct and that of its retained counsel.” *See, Kidder at 391*. The Southern District of New York acknowledged that “(g)enerally, the use of expert testimony is not permitted if it will usurp either the role of the trial judge in instructing the jury as to the applicable law or the role of the jury in applying that law to the facts before it.” *See, Kidder at 399*. In contrast, the trial court below simply treated the “propriety” of conduct at issue as a matter established by law.

It seems logical that “. . . testimony concerning . . . ordinary practices in (an) industry may be received to enable the jury to evaluate a defendant’s conduct against the standards of accepted practice . . .”. *Kidder at 401*. While the Second Circuit reportedly cautioned “. . . trial judges ‘not to allow trials before juries to become battles of paid advocates posing as experts on the respective sides concerning matters of . . . law’,” *Kidder at 401*, the trial court below simply prescribed *de facto* “standards of accepted practice”, concluding such things as “(t)here is nothing in the First Amended Complaint that even remotely connects the Lawyer Defendants to any activity other than the **normal conduct any lawyer would pursue** in defending their client . . .” *3/29/05 Order, DE#150, p 10, App p 42*. (internal citation omitted). (emphasis added); and “(h)ere, **the behavior Crenshaw alleges was not procedurally or substantially improper**.” *3/29/05 Order, DE#150, p 12, App p 44*. (emphasis added). “Whether a party acted with objective reasonableness is (supposedly) a quintessential common law jury question”. *See, Kidder at 404*. It clearly encompasses more than a determination that “. . . Crenshaw’s entire case is made up of nothing more than being on the losing end of several lawsuits . . .” *3/29/05 Order, DE#150, p 9, App p 41*.

“Dismissal under Rule 12(b)(6) is only appropriate when there is no possible interpretation of the complaint under which it can state a claim”. *Flannery v. Recording Industry Assn. of America*, 354 F3d 632 at 637 (7th Cir. 2004). Should the defendants be entitled to judgment despite the plaintiff’s proposed interpretation of her case, the ruling should issue under Federal Rule of Civil Procedure 56. *See, FRCP 56(c)*. Summary judgment “. . . shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *FRCP 56(c)*. At least under this provision, a determination that “. . . Crenshaw has been blinded by her passionate, if mistaken, belief that the system is arrayed against her” would be made upon completion of discovery and the consideration of expert testimony. *cf 3/29/05 Order, DE#150, p 14, App p 46*.

The appellant persists with this case, admittedly blinded by her passionate, if mistaken, belief that “. . . jurors . . . apply . . . law to the facts as they find them, as indeed they should, in fulfillment of the Nation’s legal traditions.” *cf Kidder at 405*. True, “(i)n *Dennis v. Sparks*, 449 U.S. 22, 66 L. Ed. 2d 185 (1980), the United States Supreme Court stated that ‘. . . merely resorting to the courts and being on the winning side of a lawsuit does not make a party a co-conspirator or a joint actor with the judge.’” *Antokol, et al. Dsms Memo p 4, DE# 96*. However, the U.S. Supreme Court also explained:

. . .

(J)udicial rulings alone ***almost*** never constitute valid basis for a bias or partiality motion. . . . In and of themselves (***i.e., apart from surrounding comments or accompanying opinion***), they cannot possibly show reliance upon an extrajudicial source, and can only in the rarest circumstances evidence the degree of favoritism

or antagonism required . . . when no extrajudicial source is involved. *Almost* invariably, they are proper grounds for appeal, not for recusal. Second, opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion *unless* they display a deep-seated favoritism or antagonism that would make fair judgment impossible.

. . .

Liteky v. United States, 510 U.S. 540 at 555 (1994). (emphasis added).

The appellees are on the “winning side” of proceedings in which a “deep-seated . . . antagonism that would make fair judgment impossible” was allegedly displayed towards the appellant. *See, 1st Amd Cmplt pp 1-25, ¶¶ 1-120, App pp 1-25.* They accordingly prospered by various abuses of process that collectively served “. . . to circumvent and retaliate for any challenge the plaintiff waged outside Indiana’s state appellate process of the judgment entered against her in *Sanchez* and insulate from corresponding liability any person within the meaning of 18 U.S.C. §1961(3), conducting or participating in such enterprise’s affairs”. *See, 1st Amd Cmplt pp 1-25, ¶¶ 1-120, App pp 1-25.* “Although a single corrupt proceeding . . . might not be sufficient to warrant an inference of conspiracy among the participants, numerous cases participated in by the same parties, and all following the same outline or pattern, are sufficient to sustain such an inference.” *See, Braatlien et al., v. United States*, 147 F.2d 888 (8th Cir. 1945). (emphasis added). The absurdity should be clear of suggesting such a phenomena can be apparent to a tenured, Rhode Island law professor, but could not happen in Lake County, Indiana or impact the plaintiff’s case as a matter of law. *cf Roger Williams University Law Review*, Vol. 9 No. 2 pp. 351-97 (6/9/04).

- 3. Any court with the flexibility to delay just short of a year, dismissing a defendant on “the reasoning set forth” in its previous order could have accommodated a second amendment of the underlying complaint, requested nearly two (2) years before the case was concluded.**

STANDARD OF REVIEW: “The district court’s denial of leave to amend a complaint is reviewed for an abuse of discretion.” *Barry Aviation Inc. v. Land O’Lakes Municipal Airport Commission*, 377 F3d 682 (7th Cir. 2004).

On June 14, 2004, the appellant as plaintiff moved for an extension of time to file her first amended complaint, primarily on the following grounds:

...

- (1) The plaintiff was extended up to and including June 14, 2004 to file her first amended complaint or respond to the outstanding motions to dismiss in the above captioned matter;
- (2) The defendants were allowed up to and including July 2, 2004 to respond to any amended complaint the plaintiff would accordingly file;
- (3) The plaintiff has consulted with prospective counsel as they endeavor to adequately familiarize themselves with the many, many facts relevant to this case;
- (4) Based on their input to date, she developed the proposed pleading attached hereto and incorporated herein as “Proposed Pleading Exhibit A”;
- (5) On June 14, 2004, that 32 page document was submitted for review to plaintiff’s prospective counsel who will edit and likely revise the same after additional consultation with the plaintiff;
- (6) That process should be complete, allowing the plaintiff’s prospective counsel to formally intervene in this matter by July 30, 2004;
- (7) Allowing the plaintiff up to and including July 30, 2004 to amend her above captioned complaint or otherwise proceed will spare the parties and this Court any duplicative and/or wasteful effort that would be attendant to proceeding on what is now Proposed Pleading Exhibit A;

...

Pltf’s Ver. Mot. for Ext. of Deadlines, DE# 82.

The trial court denied that motion, noting “(t)his case is over eighteen months old” and that “. . .

any further delay will only work to prejudice the defendants and unnecessarily delay (the) proceedings.” *See 6/30/04 Order, DE#85.*

On August 16, 2004, said plaintiff filed a fourteen (14) page motion for leave to file her second amended complaint. *Pltf’s Mot. For Leave to file 2nd Amd Cmplt, DE# 103.* Most importantly for present purposes, it notes:

...

- (1) Local Rule of Civil Procedure 23.1 provides that “(i)n any case sought to be maintained as a class action, the complaint shall bear next to its caption the legend ‘Complaint – Class Action.’;”
- (2) Plaintiff inadvertently failed to designate her first amended complaint as a class action in its caption and accordingly seeks to correct that oversight by her proposed, second amended complaint;
- (3) The attached pleading further clarifies that the proposed class is “victims of the apparent scheme or artifice to defraud within the meaning of 18 U.S.C. §1346 (*depriving another of the intangible right of honest services*), that is the subject of this litigation, to the extent the named plaintiff has standing to assert their corresponding rights pursuant to Article III, Section 2 of the United States Constitution”. *See, 2nd Amd Cmplt p 2;*

...

Id. at p 1, ¶¶ 1-3. (footnote omitted).

The plaintiff’s motion for leave to file a second amend complaint was orally denied on October 6, 2004. *See, DE# 127.*

On March 8, 2006, the trial court recounted that it “. . . entered an order on March 29, 2005 dismissing all Defendants in this case except Robert Parker and Mary Paschen”. *3/8/06 Order, DE#175, p 1, App p 48.* “Because the Court (found) that the reasoning set forth in its March 29, 2005 Order also applies to Defendant Parker . . .”, it dismissed him from this action

with prejudice on March 8, 2006. *3/8/06 Order, DE#175, p 6, App p 48*. Any court with the flexibility to delay doing so for just short of a year could have accommodated a second amendment of the underlying complaint, requested nearly two (2) years before the case was concluded.

Leave to amend a complaint “. . . shall be **freely given** when justice so requires”. *See FRCP 15*. (emphasis added). Were it not for the appellees’ wrongful conduct “. . . and that of each of them . . .”, the appellant could and would have, *inter alia*, established “. . . that people involved in the (judgment entered against her in *Sanchez*) violated some independent right of (hers), such as the right . . . to be judged by a tribunal that is uncontaminated . . .”, and eventually vindicated the related rights of Sylvia and Rosemary Sanchez. *See, Nesses v. Shepard*, 68 F.3d 1003 at 1005 (7th Cir. 1995). As a “. . . direct and proximate result of the appellees’ . . . conduct and that of each of them”, *inter alia*:

. . .

the infirmity of *Sanchez* remains concealed and doctors accordingly remain inadequately persuaded to prescribe a single effective antibacterial agent to treat the initial episode of uncomplicated urinary tract infection; children remain unnecessarily at risk for adversely reacting to the synthetic antibacterial combination of TMP-SMZ in its brand name or generic form; the connection between that risk and product defect(s) under Indiana law remains concealed to the detriment of LaRoche stockholders and other investors in the manufacture of TMP-SMZ; children have undoubtedly reacted adversely to TMP-SMZ in its brand name or generic form because of doctors inadequately persuaded to prescribe a single effective antibacterial agent to treat the initial episode of uncomplicated urinary tract infection and the connection between those reactions and inadequate warnings under Indiana law remain concealed to the detriment of those children, their parents, LaRoche stockholders and other investors in the manufacture of TMP-SMZ; the constitutional and civil rights of Sylvia Ann and Rosemary Sanchez remain abridged; they remain wrongfully deprived of a chose in action against current defendant LaRoche and the doctor that prescribed its product for Sylvia; and the current plaintiff remains wrongfully deprived of attorney fees, reasonably attendant to that chose in action.

...

1st Amd Cmplt p 29, ¶ 135 h, App p 29.

The appellees' understandable desire to "put this litigation behind them" presents "no justification" for preempting any class of their victims nor sanctioning the named plaintiff for attempting to vindicate that class. *cf Antokol, et al. Objtn to 2nd Amd Cmplt pp 2-3, DE # 108.*

4. **It is clearly an abuse of discretion to spare Mary Paschen this lawsuit, courtesy of unresponsive trial judges; a defendant unwilling to volunteer her whereabouts and thereby strengthen the prospect of its liability being corroborated; and the plaintiff who dared merely seeking court orders to bring the defendant within the court's jurisdiction.**

STANDARD OF REVIEW: A district court's failure to extend the time for service of process shall be reviewed by this Court for a corresponding abuse of discretion. *Panara v. Liquid Carbonic Industries Corp*, 94 F3d 341 (7th Cir. 1996).

As to Mary Paschen, the trial court explained:

...

Plaintiff raised the issue of service of process relating to Paschen in three pleadings filed in the District Court for the District of Columbia. First, on January 22, 2003, Plaintiff, in her Verified Application for the Default of Bank One [Doc. 42], noted that Mary Paschen was an employee at Bank One's Merrillville, Indiana office during the time period relevant to the merits of this litigation. (Pl.'s Application for Default at 3.) However, importantly, she conceded that she 'has reason to believe' that Paschen's employment at Bank One ended in December 2001. (*Id.*) According to Plaintiff, the return receipt of the papers served on Paschen indicated that the complaint and summons were received by Shelley Walker, a Bank One employee, on November 18, 2002. (*Id.*) But she stated that she is 'unable to confirm or refute [service on Paschen] because of the lack of response by [Bank One] and/or Mary A. Paschen[.]' (*Id.* at 4.) She therefore requested that the court order Bank One to comply with Indiana Trial Rule 4.16(B) regarding Mary Paschen. (*Id.*)

Second, on March 4, 2003, Plaintiff filed a Verified Motion for Extension of Time for Service of Process in Accord with 18 U.S.C. § 1965(b) [Doc. 36]. In this motion, Plaintiff again stated that she 'has reason to believe' that Paschen's

employment at Bank One ended in December 2001. (Pl.’s Mot. For Extension of Time at 3.) She requested the Court to extend the deadline for service of process until May 7, 2003, and to order Defendants ‘to assist with the identification of a current address for Mary A. Paschen and/or [to direct] Bank One Trust Company, N.A. to finalize service as to Ms. Paschen pursuant to Indiana Trial Rule 4.16(B)[.]’

Third, in her Verified Response to the Motion to Dismiss made by several Defendants [Doc. 38], she asked the Court to order all defendants who have appeared ‘to cooperate with the plaintiff in identifying a current work or home address’ for Mary Paschen. (Pl.’s Resp. Mot. To Dismiss at 16.)

...

3/8/06 Order, DE#175, pp 2-3, App pp 49-50.

“On April 4, 2005, Plaintiff filed (a) Verified Motion for an Order to Confirm or Facilitate Service on Defendant Mary Paschen and Allow Judgment to be Entered for all Defendants. [Doc. 151].” *3/8/06 Order, DE#175, p 4, App 51.*

According to the trial court, “Plaintiff . . . states that she has ‘reason to believe that Paschen’s employment with Bank One may have ended in December of 2001, but is uncertain of Paschen’s exact employment history with Bank One . . .” and “. . . cannot serve Paschen by publication because she does not know in which city, county or state Paschen resides.” *3/8/06 Order, DE#175, p 5, App p 52.* The court further reported:

...

As relief, Plaintiff in her Verified Motion requests that the Court either confirm service on Mary Paschen and then dismiss her from the suit with prejudice, or, in the alternative, order former defendant Bank One to provide Paschen’s last known home and business mailing addresses, so that Plaintiff can effect service upon Paschen before seeking judgment in Paschen’s favor. (*Id.*) Plaintiff also seeks an order requiring Bank One ‘to make a report to the Court of its action, if any, pursuant to Indiana Trial Rule 4.16(B) regarding defendant Mary Paschen[.]’ (*Id.*)

...

3/8/06 Order, DE#175, p 5, App p 52.

Quite mysterious is how the trial court got from this account to concluding that “. . . Paschen had not worked at Bank One for nearly a year when Plaintiff sent the complaint and summons by certified mail to Bank One . . .” *3/8/06 Order, DE#175, p 10, App p 57*, and that “. . . Plaintiff knew in at least January of 2003 that Paschen was no longer employed at Bank One.” *3/8/06 Order, DE#175, p 12, App p 59.*

As the plaintiff “. . . turned to the district courts for help in finding Paschen without looking into any other avenues that may have yielded Paschen’s current residence or business address”, “(t)his sequence of events (reportedly) does not reflect . . . ‘reasonable diligence’ to obtain service and therefore does not provide a valid reason for delay”. *3/8/06 Order, DE#175, p 14, App p 61.* The “invitation” was declined for “. . . a court order requiring Bank One to provide Paschen’s last known home and business mailing addresses.” *3/8/06 Order, DE#175, p 12, App p 59.* So she will be spared joining this lawsuit, courtesy of unresponsive trial judges; a defendant unwilling to volunteer her whereabouts and thereby strengthen the prospect of its liability being corroborated; and the plaintiff who dared merely seeking court orders to bring the defendant within the court’s jurisdiction. Noting “. . . there is no evidence in the record that Plaintiff in any way attempted to locate Paschen on her own”, the trial court concludes her “. . . one failed attempt does not satisfy due process concerns of providing proper notice of a lawsuit.” *3/8/06 Order, DE#175, pp 9-10, App pp 56-57.*

CONCLUSION

For the foregoing reasons, the appellant prays for a reversal of the trial court’s Order of

March 9, 2006 , effecting dismissal of all defendants with prejudice except Mary Paschen and denying in part plaintiff's motion for an order to confirm or facilitate service on defendant Mary Paschen; and **October 6, 2004**, orally denying plaintiff's motion for leave to file a second amended complaint; for costs of this action including but not limited to reasonable attorney fees; and for any and all other relief, just and proper upon the premises.

Respectfully Submitted,

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