PREPARED BY THE COURT

WISER INS. AGENCY LLC,	:	SUPERIOR COURT OF NEW JERSEY
	:	ATLANTIC COUNTY – LAW DIVISION
Plaintiffs,	:	
	:	
vs.	:	CIVIL ACTION
	:	
MY1AGENT INC., ET AL. ,	:	
	:	DOCKET NO: ATL-L-1584-22 (CBLP)
Defendants.	:	
	:	
	:	**ORDER**
	:	
	:	
	:	

THIS MATTER, having come before the court on motion by Andrew M. Braunstein, Esq., on behalf of Defendant, Farmers Property and Casualty Ins. Co., and the court having considered the motion papers, the opposition papers, the supplemental filings, and the arguments of counsel set forth on the record on December 12, 2025, and for the reasons set forth in the accompanying Memorandum of Decision,

IT IS on this 2nd day of April 2026, **ORDERED AND ADJUDGED** as follows:

- Counts 2 and 3 of the third amended complaint are **DISMISSED with prejudice** as to the movant only;
- Count 10 of the third amended complaint is **DISMISSED without prejudice** as to all Defendants; and
- The motion is denied as to Count 9.

IT IS FUTHER ORDERED that the movant shall file and serve an answer to Count 9 of the third amended complaint within 14 days of the date of this order.

IT IS FURTHER ORDERED that a copy of this order shall be deemed served on all counsel of record via filing in e-courts.

Sarah Beth Johnson
SARAH BETH JOHNSON, J.S.C.

__x__ Opposed
_____ Unopposed

SUPERIOR COURT OF NEW JERSEY

SARAH BETH JOHNSON, J.S.C.

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MEMORANDUM OF DECISION ON MOTION
Pursuant to Rule 1:6-2(f)

TO: Justin D. Santagata, Esq.
COOPER LEVENSON P.A.
Attorney for Plaintiff

Andrew M. Braunstein, Esq.
TROUTMAN PEPPER LOCKE, LLP
Attorney for Movant

RE: Wiser v. My1Agent, et al.

DOCKET NO. ATL-L-1584-22(CBLP)

Defendant, Farmers Property and Casualty Ins. Co. ("Farmers"), seeks the dismissal with prejudice of all claims asserted by Plaintiff, Wiser Ins. Agency, LLC ("Wiser"), for failure to state a claim upon which relief can be granted.

BACKGROUND & PROCEDURAL HISTORY

This matter arises from a failed business venture between Wiser and Defendants My1Agent, Inc. and Atlantic Insurors, Inc. (collectively "My1Agent") to sell and service consumer insurance policies. The parties started their venture in early 2021, but the relationship between the principals quickly soured, and Wiser filed its initial pleadings in June 2022, alleging breach of contract and other related claims.

After an order to show cause, counterclaim, amended claims, and additional third-party claims (and all the motion practice related thereto), Wiser filed a third amended complaint in June 2024. In that complaint, Wiser alleges claims of negligence (Count 2), conversion (Count 3), tortious interference (Count 9), and racketeering under N.J.S.A. 2C:41-3 (Count 10) against Farmers.

Farmers responded to the complaint by filing this motion in lieu of answer on or about November 5, 2024. The motion was originally returnable December 6, 2024, but Wiser requested an adjournment, and the hearing date was set for December 20, 2024. Thereafter, Wiser filed its opposition on December 10, 2024.

At the parties' request, the motion was adjourned approximately 15 times until December 12, 2025, when I heard oral argument. Prior thereto, Wiser had filed a supplemental opposition on

September 22, 2025, and Farmers had filed a reply on November 3, 2025. After I reserved decision, Plaintiff filed an unsolicited supplemental submission on February 19, 2026 to which Farmers responded on March 4, 2026.

THE PARTIES' CONTENTIONS

Farmers asserts that Wiser has presented an insufficient factual or legal basis to bring it into the dispute between Wiser and My1Agent. Farmers denies the existence of any duty to Wiser that could support a negligence claim. It denies having any control over the commission payments or book of business needed to support a conversion claim. It submits that there is no evidence that Farmers acted with malice to establish a tortious interference claim. Farmers also argues Wiser has failed to sufficiently allege a factual basis for the racketeering claim under New Jersey's Racketeering statute, N.J.S.A. 2C:41-1, et seq. ("NJRICO").

In opposition, Wiser submits Farmers had a "duty to investigate" the nature of the relationship between Wiser and My1Agent before engaging in various transactions. Wiser also insists it has adequately plead claims for conversion, tortious interference, and violations of NJRICO.

THE MOTION STANDARD

Farmers seeks relief under R. 4:6-2(e). In considering an application, the court's inquiry is limited to "examining the legal sufficiency of the facts alleged on the face of the complaint" and determining "whether a cause of action is 'suggested' by the facts." Green v. Morgan Properties, 215 N.J. 431, 451-52 (2013) (internal citations omitted). The party opposing the motion is "entitled to every reasonable inference of fact." Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989).

In other words, "[t]he motion judge must accept as true all factual assertions in the complaint … [and] accord to the non-moving party every reasonable inference from those facts." Malik v. Ruttenberg, 398 N.J. Super. 489, 494 (App. Div. 2008). The judge must examine the complaint "'in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.'" Green, supra, 215 N.J. at 452 (2013) (quoting Printing Mart-Morristown, supra).

Though the court must take "a generous and hospitable approach" in decision whether to dismiss a claim under R. 4:6-2(e), "[a] pleading should be dismissed if it states no basis for relief and discovery would not provide one." Flinn v. Amboy Nat'l Bank, 436 N.J. Super. 274, 286 (App. Div. 2014)(quoting Rezen Family Assocs., LP v. Borough of Millstone, 423 N.J. Super. 103, 113 (App. Div. 2011)). However, the New Jersey Supreme Court has indicated that an order granting a motion to dismiss under R. 4:6-2(e) should usually be without prejudice, giving the plaintiff an opportunity to re-plead, if they can do so, to state a viable cause of action. Nostrame v. Santiago 213 N.J. 109, 128 (2013); see also, Hoffman v. Hampshire Labs, Inc., 405 N.J. Super. 105, 116 (App. Div. 2009); Printing Mart-Morristown, supra, 116 N.J. at 771-72.

MATERIAL FACTS

Based on the record before me, I find the following factual allegations to be material to this application:

- Wiser, acting as an insurance producer, agreed to partner with My1Agent to move insurance policies serviced by Wiser to other insurance companies with whom only My1Agent had an existing relationship – Farmers, for example.

- The intent was that Wiser would act as a subproducer of My1Agent, and insurers (like Farmers) would pay commissions to My1Agent pursuant to their appointment agreements.

- In exchange for Wiser's contacts and efforts, My1Agent agreed to pay Wiser 50% of the commissions earned on the policies.

- Wiser and My1Agent signed an agreement with these terms on March 16, 2021.

- Thereafter, Wiser provided its customers' information to My1Agent to facilitate a "rollover" of its customer base to My1Agent.

- In June 2021, Wiser and My1Agent began jointly communicating with insurance carriers (like Farmers) about a potential rollover using My1Agent and Wiser email addresses.

- Throughout the second half of 2021, employees of Wiser and My1Agent communicated with Farmers about the rollover and repeatedly represented to Farmers that the rollover and merger were happening.

- On or about August 31, 2021, My1Agent and Farmers entered into an Independent Agency Agreement ("IAA")

- The rollover of Wiser's book of business to My1Agent was scheduled to begin in November 2021.

- After the rollover, Farmers began paying commissions to My1Agent consistent with the terms of the IAA.

- Farmers gave Wiser's employees access to Farmers' portal so Wiser could write business and service policyholders as a subproducer of My1Agent.

- Throughout 2022, My1Agent represented to Farmers and insureds that it owned the book of business.

- Based on these representations, Farmers continued paying commissions to My1Agent as the producer who placed the business under the IAA.

- In or about March 2022, a dispute arose between Wiser and My1Agent because My1Agent failed to pay Wiser the agreed upon portion of the commissions paid by Farmers.

- The original complaint was filed June 2022, and Wiser filed a third amended complaint in June 2024 impleading Farmers and other insurance carriers who have conducted business with My1Agent during the relevant period.

ANALYSIS

For the foregoing reasons, I am granting partial relief to Farmers. Counts 2 and 3 are dismissed with prejudice, Count 10 is dismissed without prejudice, and Wiser may proceed with its tortious interference claim set forth in Count 9.

I. Wiser Cannot Establish a Negligence Claim against Farmers.

In Count 2 of the third amended complaint, Wiser alleges that My1Agent "had a duty to responsibly handle Wiser's book of business pending consummation of a full agreement" between it and Wiser. Wiser further alleges that Farmers and the other insurance carriers "had a duty to confirm ownership of Wiser's book of business before greedily rolling over the insureds." It alleges that this duty arose "particularly" once Farmers learned of the dispute between Wiser and My1Agent, and Farmers' continued commission payments to My1Agent breached its duty to Wiser, causing it "extensive damage."

Opposing this motion, Wiser further argues Farmers had a "duty to investigate" the validity of the purported merger between Wiser and My1Agent before issuing policies to Wiser's insureds. Wiser argues Farmers unreasonably relied on My1Agent's representations of a merger when Farmers knew, or should have known, that those representations were allegedly false.

New Jersey law does not recognize the automatic acquisition of a legal duty – such as a duty to investigate, disclose, or act – when one party learns of a dispute between two other parties, with one of whom the first party has a contract. The imposition of a duty under these circumstances depends on the existence of an independent legal duty, a special relationship, or statutory obligations – none of which are present here.

As the record shows, the relationships between My1Agent and Wiser, and My1Agent and Farmers, were contemplated by arms-length negotiations and created (in the case of Farmers) with the execution of a written agreement. It appears that My1Agent represented to Farmers that Wiser was a subproducer whose book of business had been rolled into My1Agent's. Thus, Farmers was required to remit to My1Agent commission payments generated for the My1Agent-Wiser book of insureds pursuant to the IAA.

The fact that Farmers later became aware of the dispute between Wiser and My1Agent over the "ownership" of those insureds' business did not change the terms of the IAA. Nor did the dispute create a duty on behalf of Farmers to accept as true Wiser's allegations against My1Agent such that Farmers became legally required to stop paying commissions to My1Agent

under the IAA. Had Farmers done so, it would likely have committed a material breach of the IAA. See e.g. Roach v. BM Motoring, LLC, 228 N.J. 163, 174 (2017).

Although I previously found Wiser and My1Agent failed to reach a meeting of the minds on several essential terms governing their relationship (and the dissolution thereof), there have been no findings of fact regarding the various forms of tortious conduct claimed on all sides. Regardless of what evidence has been adduced during discovery, there is nothing in the record currently before me establishing that Farmers, when faced with a dispute between My1Agent and Wiser, must (or even should) ignore its contractual obligations to My1Agent for the benefit of Wiser.

Farmers has a duty to the insureds to whom it has issued policies, and it is obligated to perform under the terms of the IAA with My1Agent. I find no evidence in the record, and no statutory or case law, establishing Farmers' duty to Wiser under these circumstances.

The existence of a duty is essential to establishing a negligence claim – particularly when, as here, it is not simply a question of what a reasonably prudent person would do in a similar situation. See e.g. Fernandes v. DAR Dev. Corp., Inc., 222 N.J. 390, 405-406 (2015) (recognizing cases where "the collective experience of the jury is not sufficient to measure the defendant's conduct.") (citing Sanzari v. Rosenfeld, 34 N.J. 128, 134-35 (1961)). Because Wiser cannot establish an essential element of its claim, I find that Farmers is entitled to dismissal of Count 2.

I further find that, contrary to the preference expressed by the Nostrame Court, dismissal with prejudice is appropriate because no amount of repleading will create the existence of a duty by Farmers to Wiser under these circumstances.

Farmers' application is GRANTED as to Count 2 of Wiser's third amended complaint.

II. Wiser Cannot Establish a Conversion Claim against Farmers.

Farmers is also entitled to the dismissal with prejudice of Count 3 of the third amended complaint.

"The crux of conversion is wrongful exercise of dominion or control over property of another without authorization and to the exclusion of the owner's rights in that property." Chicago Title Ins. Co. v. Ellis, 409 N.J. Super. 444, 456 (App. Div. 2009). In the third amended complaint, Wiser alleges that Farmers (and the other insurance carriers)

> have converted Wiser's book of business. The Carriers would not have had Wiser's most or even all of [the] book of business but for the rollover through My1Agent. Prior to the rollover, the book of business was mostly with other insurance carriers. Once in possession of Wiser's book of business, the Carriers refused to give any commissions to Wiser, only recognized My1Agent as owner of the book of business, and converted the book of business for their own business purposes as though they owned it.

As noted in Farmers' motion papers, these allegations do not accurately depict the respective roles of the parties. Wiser and My1Agent are insurance agents, brokers, or producers, who interact with individual people and businesses to facilitate the acquisition of consumer insurance policies. Farmers is the insurance carrier who issues the policies to the customers. It is a typically collaborative arrangement between the producers and the carriers; nevertheless, the customers have the final say in the carrier they use and the policy they purchase.

As I understand from almost 4 years of litigation regarding this failed venture that lasted about 9 months, the parties contemplated that Wiser would bring the customers (with whom My1Agent did not have a prior relationship) and My1Agent would bring the carriers (with whom Wiser did not have a prior relationship). Then, when the merger collapsed, Wiser claimed My1Agent stole its customers, and My1Agent claimed Wiser stole its carriers.

Accordingly, Wiser's "book of business" (i.e. customer contacts and relationships) is a thing that can be assigned a monetary value for the income it generates in the form of commissions. However, it is not tangible personal property, money, or a financial instrument recognized as susceptible to conversion. See e.g. LaPlace v. Briere, 404 N.J. Super 585 (2009)(dispute over use of a plow); Chicago Title Ins. Co. v. Ellis, supra, (dispute over fraudulently obtained loan proceeds deposited into a bank account); N.J.S.A. 12A:3-420 (recognizing that a financial instrument can be converted if it is taken by transfer from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment). Wiser's customer base is not subject to conversion by Farmers under these circumstances.

Moreover, Wiser's share of the commission payments paid by Farmers to My1Agent is disputed and has not yet been determined by a factfinder such that Wiser could establish either Farmers or My1Agent wrongfully exercised control over it. See Commercial Ins. Co. of Newark v. Apgar, 111 N.J. Super. 108, 114-15 (Law Div. 1970)("It is essential that the money converted by a tortfeasor must have belonged to the injured party.") In short, Wiser's undefined portion of Farmer's commission payments is not subject to conversion.

Although I cannot find that Wiser is not entitled to damages from Farmers under another theory of liability, the facts and law do not support a viable claim of conversion against Farmers, and no amount of repleading will cure the deficiency.

Farmers' application is GRANTED as to Count 3 of Wiser's third amended complaint.

III. Wiser's Tortious Interference Claim is Sufficiently Plead as to Farmers.

To succeed on a claim for tortious interference, Wiser must establish (1) a protectable interest; (2) malice or intentional interference without justification; (3) a reasonable likelihood that the

interference caused the loss of a prospective gain; and (4) resulting damages. Printing Mart-Morristown v. Sharp Electronics Corp. 116 N.J. 739, 751-52 (1989).

In Count 9, Wiser alleges My1Agent, Farmers, and the other named carriers "tortiously interfered with the contractual relations that exist or have existed between the [sic] Wiser and its customers and insurance carriers." Wiser specifically cites the April 22, 2022 letter sent under a combined My1Agent-Wiser letterhead, which advised customers that (1) Wiser and My1Agent were working together and (2) Farmers would be forwarding a policy offer to the customer.

Given that Wiser and My1Agent's dispute arose in March 2022, the April 22, 2022 letter indisputably contains a misrepresentation – negligent or intentional – regarding the relationship between the two insurance producers. It is alleged that this letter (and subsequent communications) had the effect of diverting Wiser's customers to not only My1Agent, but also Farmers and other carriers with whom Wiser did not have a relationship.

It is further alleged that, prior to the issuance of the April 22, 2022 letter, Wiser notified Farmers of its dispute with My1Agent's merger and "book roll" representations. In response, Farmers continued to issue policies and pay commissions to My1Agent for those customers whose relationship with My1Agent was disputed by Wiser, effectively eliminating Wiser from the transactions.

For purposes of pleading a tortious interference claim, Wiser has established (1) a protectable interest (its book of business); (2) interference with its customer relationships (by My1Agent with Farmers participating while recognizing the dispute); (3) a reasonable likelihood that the interference caused the loss of a prospective gain (the customers bought policies with carriers from whom Wiser could or would not obtain commissions) ; and (4) resulting damages (the lost past and future commissions). Affording Wiser all reasonable inferences, this alleged conduct by Farmers will support a tortious interference claim..

While Farmers argues that Wiser will not be able to establish the scienter element necessary to succeed on a tortious interference claim, Farmers' state of mind is not an appropriate topic for my consideration at this time. "To defeat a Rule 4:6-2(e) motion, a plaintiff does not have to prove [its] case but must establish the complaint contains 'allegations which, if proven, would constitute a valid cause of action.'" Neuwirth v. State, 476 N.J. Super. 377, 389-90 (App. Div. 2023) (quoting Kieffer v. High Point Ins. Co., 422 N.J. Super. 38, 43 (App. Div. 2011)). Whether Wiser will be able to prove to the trier of fact that Farmers maliciously or unjustifiably interfered in its customer relationships remains to be seen.

For purposes of this motion, Wiser has presented facts supporting a viable claim under the applicable law. Farmers' application is DENIED as to Count 9 of Wiser's third amended complaint.

IV. Wiser Cannot Establish a Civil NJRICO Claim.

In Count 10, Wiser alleges My1Agent and Farmers violated NJRICO, specifically N.J.S.A. 2C:41-3, and asserts a civil claim against them as permitted by N.J.S.A. 2C:41-4(c). While N.J.S.A. 2C:41-3 addresses criminal penalties, Wiser appears to allege that My1Agent and Farmers engaged in prohibited activities as defined by N.J.S.A. 2C:41-2.

To prevail on a civil NJRICO claim, a plaintiff must prove (1) the existence of an enterprise; (2) that the enterprise engaged in or its activities affected trade or commerce; (3) that defendant was employed by, or associated with the enterprise; (4) that they participated in the conduct of the affairs of the enterprise; and (5) that they participated through a pattern of racketeering activity. State v. Ball (Ball I), 268 N.J. Super. 72, 99 (App. Div. 1993).

"'Enterprise' is broadly defined to include all kinds of entities, as well as 'any individual' and any 'group of individuals' who are 'associated in fact although not a legal entity.'" Fairfax Fin. Holdings Ltd. v. S.A.C. Cap. Mgmt., L.L.C., 450 N.J. Super. 1, 38 (App. Div. 2017). The enterprise "must have an 'organization.' … The division of labor and the separation of functions undertaken by the participants serve as the distinguishing marks of the 'enterprise' because when a group does so divide and assemble its labors in order to accomplish its criminal purposes, it must necessarily engage in a high degree of planning, cooperation and coordination, and thus, in effect, constitute itself as an 'organization.'" State v. Ball (Ball II), 141 N.J. 142, 162 (1995).

NJRICO defines a racketeering act to include any of the enumerated crimes in N.J.S.A. 2C:41-1(a), including theft, forgery and fraudulent practices, money laundering, and receiving stolen property. A pattern of racketeering activity is defined with two components: (1) at least two incidents of racketeering conduct (predicate acts); and (2) the conduct must have "the same or similar purposes, results, participants or victims or methods of commission or are otherwise interrelated by distinguishing characteristics and are not isolated incidents." N.J.S.A. 2C:41-1(d).

NJRICO is not limited to traditional organized crime; it also applies to "organized crime type activities" that are "substantial in nature." Maxim Sewerage Corp. v. Monmouth Ridings, 273 N.J. Super. 84, 93 (Law Div. 1993) (quoting Ball I, 268 N.J. Super. at 104). But NJRICO is not intended to address "garden-variety" fraud or isolated criminal behavior. Id. at 92-93. Nor does it apply to ordinary business disputes unless the conduct at issue rises to the level of a pattern of racketeering activity as defined by the statute. Id. at 93.

Here, Wiser alleges Farmers and My1Agent engaged in mail fraud, theft, and "computer criminal activity" as the predicate acts of racketeering. As to Farmers, these imprecisely stated crimes arise from the same activities underlying Wiser's allegations of negligence, conversion, and tortious interference. Specifically, Wiser asserts that Farmers' knowledge of (or participation in) the issuance of the April 22, 2022 letter to Wiser's customers constituted fraud. Wiser also asserts that Farmers stole Wiser's book of business by working with My1Agent to issue policies to Wiser's customers.

While I understand that Wiser interprets this conduct as inappropriate, wrongful, and even criminal, I cannot conclude based on the record that Wiser's interpretation of events is the only reasonable one. Obviously, My1Agent disputes that it was prohibited from servicing the merged "book roll" of Wiser and My1Agent customers, and Farmers disputes that it was legally obligated to refrain from issuing policies to customers or paying commissions to My1Agent pursuant to the terms of the IAA.

Without evidence that My1Agent, Farmers, or anyone else has been criminally charged, convicted, or even found civilly liable of the various "crimes" alleged by Wiser, I agree with Famers that these conclusory allegations of wrongdoing are insufficient to establish a pattern of racketeering required to support an NJRICO claim.

Wiser contends that My1Agent (with the assistance of Farmers and others) engaged in unfair business practices that resulted in the loss of income and negatively affected Wiser's ability to generate new business and income. However, Wiser's belief that My1Agent and Farmers wrongfully excluded it from their business enterprise does not, on its own, convert their conduct into criminal activity.

As evidenced by Wiser's alternative pleading, there is nothing distinguishing the Defendants' alleged racketeering from their purportedly tortious conduct. Furthermore, the ultimate objective of all these activities was to sell consumer insurance products for profit - not to engage in theft, forgery, tax evasion, money laundering, or any of the other criminal activity NJRICO was enacted to remedy. NJRICO is not intended to address ordinary business torts. I cannot find that Wiser's allegations against Defendants rise to the level of racketeering activity.

However, it is possible that facts may arising during discover that show Defendants intended to engage in a pattern of criminal activity – in addition to selling consumer insurance products. Thus, I will dismiss Count 10 of the complaint as to all Defendants without prejudice.

But any attempt to reinstate the NJRICO claim must be accompanied by specific, undisputed evidence of a pattern of racketeering – not just interpretations of testimony or evidence of arguably tortious conduct that a factfinder would have to pass judgment on. I do not find that further expanding the scope of this limited business dispute between two consumer insurance policy producers (and a handful of insurance carriers) will be conducive to ultimately resolving this matter.

Farmers' application is partially GRANTED as to Count 10 of Wiser's third amended complaint.

CONCLUSION

Farmer's application under R. 4:6-2(e) is **GRANTED in part**, and it must file and serve an answer to the surviving counts of the third amended complaint within 14 days of the date of the accompanying order, which has been entered. Conformed copies accompany this Memorandum of Decision.

The filing of the order and this Memorandum on e-courts shall serve as service of same on all counsel of record. Counsel for movant shall serve any unrepresented parties within 7 days.

Sarah Beth Johnson
SARAH BETH JOHNSON, J.S.C.