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# [***Crowden v. Unicarriers Ams. Corp.***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5RHW-16M1-F4W2-6512-00000-00&context=)

United States District Court for the Northern District of Alabama, Northwestern Division

January 8, 2018, Decided; January 8, 2018, Filed

Case No. 3:16-cv-01440-HNJ

**Reporter**

2018 U.S. Dist. LEXIS 14444 \*

HORACE CROWDEN, et al., Plaintiffs vs. UNICARRIERS AMERICAS CORPORATION, Defendant

**Core Terms**

dealers, suppliers, business relationship, plaintiffs', tortious interference, stranger, heavy equipment, statutes, damages, plausibility, contractual, Franchise, terms, cause of action, remedies, provides, loss of profits, manufacturers, contends, pleaded, economic interest, defense motion, special damage, distributors, citations, requires, parties, unfair, dealership, provisions

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**Judges:** HERMAN N. JOHNSON, JR., UNITED STATES MAGISTRATE JUDGE.

**Opinion by:** HERMAN N. JOHNSON, JR.

**Opinion**

**MEMORANDUM OPINION AND ORDER**

This diversity action proceeds before the court on defendant's Motion to Dismiss. (Doc. 2). The plaintiffs sue the defendant for its failure to permit plaintiffs' purchase of one of its distributors, which purportedly violates the [*Alabama Heavy Equipment Dealer Act*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70PR-00000-00&context=) and constitutes a tortious interference with plaintiffs' business relations. In its Motion to Dismiss, defendant contends the AHEDA provides remedies only for suppliers and dealers, not third-parties such as plaintiffs. Furthermore, defendant argues it is not a stranger to plaintiffs' transaction, and thus, it did not tortiously interfere with the transaction. After consideration of the complaint, the parties' briefs, and the applicable law, the court **DENIES** defendant's Motion as to the AHEDA claim, and **GRANTS** defendant's**[\*2]** Motion as to the tortious interference claim.

**Standard of Review**

[*Rule 12(b)(6), Federal Rules of Civil Procedure*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=), permits a court to dismiss a complaint if it fails to state a claim for which relief may be granted. In [*Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W9Y-4KS0-TXFX-1325-00000-00&context=), the Court revisited the applicable standard governing [*Rule 12(b)(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=) motions to dismiss. First, courts must take note of the elements a plaintiff must plead to state the applicable claims at issue. [*Id. at 675*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W9Y-4KS0-TXFX-1325-00000-00&context=).

After establishing the elements of the claim at issue, the court identifies all well-pleaded, non-conclusory factual allegations in the complaint and assumes their veracity. [*Id. at 679*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W9Y-4KS0-TXFX-1325-00000-00&context=). Well-pleaded factual allegations do not encompass mere "labels and conclusions," legal conclusions, conclusory statements, or formulaic recitations and threadbare recitals of the elements of a cause of action. [*Id. at 678*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W9Y-4KS0-TXFX-1325-00000-00&context=) (citations omitted). In evaluating the sufficiency of a plaintiff's pleadings, the court may draw reasonable inferences in plaintiff's favor. [*Aldana v. Del Monte Fresh Produce, N.A., Inc., 416 F.3d 1242, 1248 (11th Cir. 2005)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4GK8-2WF0-0038-X4G3-00000-00&context=).

Third, a court assesses the complaint's well-pleaded allegations to determine whether they state a plausible cause of action based upon the identified claim's elements. [*Iqbal, 556 U.S. at 678*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W9Y-4KS0-TXFX-1325-00000-00&context=). Plausibility ensues "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable**[\*3]** for the misconduct alleged," and the analysis involves a context-specific task requiring a court "to draw on its judicial experience and common sense." [*Id. at 678, 679*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W9Y-4KS0-TXFX-1325-00000-00&context=) (citations omitted). The plausibility standard does not equate to a "probability requirement," yet it requires more than a "mere possibility of misconduct" or factual statements that are "merely consistent with a defendant's liability." [*Id. at 678, 679*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W9Y-4KS0-TXFX-1325-00000-00&context=) (citations omitted).

**BACKGROUND**

Plaintiffs Horace Crowden and Keith Crowden brought this action against defendant UniCarriers Americas Corporation (UniCarriers), asserting causes of action for violation of the [*Alabama Heavy Equipment Dealer Act, Ala. Code §§ 8-21B-1 to 8-21B-15*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70PR-00000-00&context=), and tortious interference with business relations.[[1]](#footnote-0)1 The complaint alleges Lift Service, Inc. (LSI), has served as an independent service provider to the lift truck industry for 35 years. LSI's territory includes counties in north Alabama, southern Tennessee, and eastern Mississippi. LSI has distributed the Komatsu Forklift U.S.A. LLC (Komatsu) product line since 1989. It became a distributor for TCM Corporation in 2010, and in 2013 TCM integrated with Nissan Forklift Co. Ltd., to form UniCarriers. In early summer 2015, the Crowdens commenced negotiations with**[\*4]** Dennis Gray (LSI's founder and president) to purchase all LSI stock, resulting in an agreement for the Crowdens to pay $3,875,090, including salary and benefits, to various individuals employed by LSI, over a seven-year period. The Crowdens also agreed to remove Gray as guarantor on LSI's company debt and purchase the real estate on which LSI operates. Gray, with 35 years in the business, agreed to continue to work for LSI for five years after the sale to plaintiffs. Doug Hill, LSI's sales manager and general manager with 30 years in the business, also agreed to stay for five years.

As required under LSI's franchise agreements with Komatsu, LSI notified Komatsu of the intended sale to the Crowdens and requested consent. Komatsu consented on July 15, 2015. On September 16, 2015, UniCarriers denied consent, citing plaintiffs' lack of experience and purported failure to provide *pro forma* financial statements. UniCarriers conveyed that Gray and Hill's continued service to LSI does not alter its decision due to the Crowdens' lack of experience. UniCarriers also declared no method of restructuring would change its decision. The Crowdens**[\*5]** assert UniCarriers unreasonably withheld consent to the Crowdens' purchase of LSI.

UniCarriers contends AHEDA offers no protection to non-suppliers or non-dealers such as plaintiffs. Alternatively, Unicarriers contends that plaintiffs' speculative damages fall outside the limited types of damages allowed by AHEDA. As to the tortious interference claim, defendant asserts plaintiffs failed to plead the existence of a valid contractual or business relationship between themselves and LSI or Gray with which UniCarriers could potentially interfere. Alternatively, defendant avers it is not a "stranger" to the purported business relationship between plaintiffs and LSI/Gray.

**Analysis**

**Plaintiffs May Pursue an AHEDA Cause of Action**

UniCarriers argues in its motion that plaintiffs may not sustain their AHEDA claim because it provides remedies only for suppliers and dealers, and because plaintiffs have not pleaded proper damages under the statute. The foregoing analysis establishes that plaintiffs constitute "persons" pursuant to AHEDA's provision for causes of action, and plaintiffs properly aver lost profits pursuant to the same provision.

AHEDA, enacted in 2009 and codified at [*Ala. Code §§ 8-21B-1 to 8-21B-15*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70PR-00000-00&context=), reflects a concern**[\*6]** "to ***regulate*** the conduct of heavy equipment suppliers and their representatives doing business in this state in order to prevent fraud, unfair business practices, unfair methods of competition, and other abuses upon its citizens." [*Ala. Code § 8-21B-2*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70PT-00000-00&context=). "The act provides for the ***regulation*** of heavy equipment manufacturers, distributors, and dealers, provides for the ***regulation*** of dealings and transactions between heavy equipment manufacturers and distributors and their dealers, prescribes prohibited acts, provides penalties for violation of the act, and establishes remedies for any person injured as a result of a violation." Alabama Legislative Reference Service, *Summaries of General Laws Enacted and Constitutional Amendments Proposed by the Legislature of Alabama at the 2009 Regular Session*, http://lrs.state.al.us/publications/2009\_regular\_summaries.html#Anchor-Ac-18590. The Act deems its provisions incorporated into every dealer agreement within its purview, and it supersedes any contractual term inconsistent with its provisions. [*Ala. Code § 8-21B-9*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70R9-00000-00&context=).

However, these unadorned references to AHEDA's purpose belie its protectionist nature in favor of dealers. AHEDA represents a "prominent area of specialized franchisor-franchisee ***regulation*** . . . in the farm and heavy**[\*7]** implement industry [which] . . . protects dealers in farm implements and machinery." W. Michael Garner, 3 Franch. & Distr. Law & Prac. § 16:1 (October 2017 Update).[[2]](#footnote-1)3 States enact these laws to "level the playing field" and "[d]isparities in bargaining power" between locally-owned equipment dealers and the international or national suppliers/manufacturers who can force a "dealership to accept unfair or oppressive terms." Bradfute W. Davenport, Jr. and William H. Hurd, *Dealer Protection Statutes Level the Playing Field for Heavy Equipment Dealers*, 25 LJN's Equip. Leasing Newsletter 1 (Law Journals Newsletter, Philadelphia, PA), August 2006, *available at* https://www.troutman.com/files/upload/davenportdealerarticle.pdf .[[3]](#footnote-2)4 Thirty-five states maintain such "statutes protecting dealers in farm implements and similar heavy equipment," Garner, *supra*, at § 16.5, yet such laws exist in virtually all states for some form of dealer-protection.[[4]](#footnote-3)5

AHEDA comprises substantial protections in favor of dealers. For example, suppliers may not amend, terminate, or refuse to renew a dealer's agreement, or unilaterally cause a dealer to withdraw from an agreement, without good cause and 120 days' written notice. [*Ala. Code §§ 8-21B-4*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70PY-00000-00&context=) & [*5*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70R1-00000-00&context=). AHEDA limits the term "good cause" "to withdrawal by the**[\*9]** supplier, its successors, and assigns of the sale of its products in Alabama" or certain "dealer performance deficiencies." *Id.* at [*§ 8-21B-4*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70PY-00000-00&context=). Further, good cause "shall not include the sale or purchase of a supplier." *Id.* In the event of "voluntary or involuntary termination, nonrenewal, or discontinuance of [a] dealer agreement by the dealer or supplier," AHEDA requires suppliers to repurchase all heavy equipment acquired from the supplier within three years of the pertinent event, all supplies acquired from the supplier within seven years of the pertinent event, and all specialized repair implements required by the supplier, with such items delivered for repurchase at the dealers' premises. *Id.* at [*§ 8-21B-12*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70RH-00000-00&context=). AHEDA does not exist in a vacuum, as the Alabama legislature enacted similar statutes for the protection of dealers in other specialized industries. *See* The [*Motor Vehicle Franchise Act, Ala. Code § 8-20-1, et seq.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70KY-00000-00&context=); The Tractor, Lawn and Garden and Light Industrial Equipment Franchise Act, [*Ala. Code § 8-21A-1, et seq.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70NR-00000-00&context=); The [*Sale of Recreational Vehicles Act, Ala. Code § 8-21C-1, et seq.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70RW-00000-00&context=) The court must effect the Alabama legislature's intent in AHEDA to protect dealers in their transactions with suppliers, to the extent permitted by the statutory terms.

In the action at bar, plaintiffs**[\*10]** claim defendant violated AHEDA's [*§ 8-21B-6*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70R3-00000-00&context=), which reads in pertinent part:

(a) No supplier shall unreasonably withhold or delay consent to any transfer of the dealer's business or dealer agreement or transfer of the stock or other interest in the dealership whenever the transferee meets the material and reasonable qualifications and standards of the supplier required in appointing its dealers. Should a supplier determine that a proposed transferee does not meet its qualifications and standards, it shall give the dealer written notice thereof, stating the specific reasons for withholding consent.

(b) In any dispute as to whether a supplier has denied consent in violation of this section, the supplier shall have the burden of proving a substantial and reasonable justification for the denial of consent.

Defendant contends these AHEDA provisions govern the conduct of "dealers" and "suppliers" only and, thus, fosters no obligation as to plaintiffs because they do not qualify as "dealers."[[5]](#footnote-4)6

Notwithstanding [*§ 8-21B-6*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70R3-00000-00&context=)'s couching of its terms vis-à-vis the obligations of suppliers and dealers, the court must interpret statutes first and foremost pursuant to the plain meaning of their terms. [*DeKalb County LP Gas Co., Inc. v. Suburban Gas, Inc., 729 So.2d 270, 275 (Ala. 1998)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3V7W-G1K0-0039-44M0-00000-00&context=) ("Words used in a statute**[\*11]** must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect.") (citations omitted). And according to the plain meaning of its terms, AHEDA does not limit its remedies for a violation of its provision to only dealers and suppliers.

AHEDA provides a cause of action to "*any person* who suffers bodily injury, loss of profit, or property damage as a result of a violation of this chapter." [*Ala. Code § 8-21B-13*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70RK-00000-00&context=) (emphasis added). Indeed, AHEDA broadly defines the term "person" as a "natural person, partnership, association, corporation, or other legal entity or a combination of legal entities. The term also includes heirs, assigns, personal representatives, guardians, and successors in interest." *Id.* at [*§ 8-21B-3(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70PW-00000-00&context=).

As depicted, AHEDA does not state "suppliers" and "dealers" may pursue causes of actions; it states "any person" may do so, and it does not limit its definition of the term "person" to "supplier" and "dealers." That AHEDA**[\*12]** introduces examples of the term "person" with the word "include" indicates that its delineation is not exhaustive. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: the Interpretation of Legal Texts* 132 (2012) ("the word *include* does not ordinarily introduce an exhaustive list") (emphasis in original) (citing, *inter alia,* [*Federal Land Bank of St. Paul v. Bismarck Lumber Co., 314 U.S. 95, 100, 62 S. Ct. 1, 86 L. Ed. 65 (1941)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5TS0-003B-701J-00000-00&context=) ("the term 'including' is not one of all-embracing definition, but connotes simply an illustrative application of the general principle")). Indeed, limiting the term "person" to dealers and suppliers fashions an absurdity because AHEDA commences the definitions of the terms "dealer" and "supplier" with a "person, . . . .). [*Ala Code. §§ 8-21B-3(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70PW-00000-00&context=) & [*(8)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70PW-00000-00&context=). That is, it is logically incoherent to limit the meaning of the term person to dealers and suppliers when those very terms include the word "person" within their definitions. *See* [*Atlantic Cleaners & Dyers, Inc. v. United States, 286 U.S. 427, 433, 52 S. Ct. 607, 76 L. Ed. 1204 (1932)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-CVM0-003B-73J4-00000-00&context=) ("[T]here is a natural presumption that identical words used in different parts of the same act are intended to have the same meaning."); Scalia & Garner, *supra*, at 170 (a "word or phrase is presumed to bear the same meaning throughout a text"); accord [*K Mart Corp. v. Cartier, Inc., 486 U.S. 281, 291, 108 S. Ct. 1811, 100 L. Ed. 2d 313 (1988)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-F350-003B-43W2-00000-00&context=) ("In ascertaining the plain meaning of [a] statute, the court must look to the particular statutory language at issue, as well as the language**[\*13]** and design of the statute as a whole.").

Notwithstanding AHEDA's plain and clear definition of the term "person," defendant contends the inclusion of "any person" in this statute must align with the stated purpose of the Act, the ***regulation*** of "heavy equipment suppliers and dealers and their representatives," such that the Act does not cover non-suppliers and non-dealers such as plaintiffs. As support for this contention, defendant refers to the entire statutory scheme which speaks only in terms of dealers and suppliers and contains no provisions specifically addressing proposed transferee rights or responsibilities.

Contrary to the defendant's contention, AHEDA's afore-discussed dealer-protective nature unmistakably refutes the argument. AHEDA's definition of "person" implicitly incorporates protection for a dealer to transfer ownership of its business to family members. As quoted earlier, AHEDA includes in its definition of "persons" heirs, assigns, personal representatives, guardians, and successors in interest. [*Ala. Code § 8-21B-3(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70PW-00000-00&context=). The inclusion of these categories indicates a particular event this species of statutes attempt to interdict: a supplier's veto of a dealer's efforts to transfer the dealership**[\*14]** to offspring or other family members. *See* Leydig, *supra* note 3, at 14 ("The advantages to a dealer who qualifies under an equipment dealer law are typically substantial. . . . [M]ost of these statutes address issues of succession; typically removing restrictions on succession and transfer that one might expect to find in an unregulated dealer agreement."). Importantly, AHEDA provides, at the least, that the prospective transferees may enforce the consent provisions due to its inclusion of "heirs, assigns," etc., in its definition of "persons." To the undersigned's knowledge, the plaintiffs at bar are not related to Gray, yet AHEDA does not limit its definition of persons to "heirs, assigns," etc., and therefore, it does not limit its donative transfer protections to family members. *See* Scalia & Garner, *supra*, at 225 ("Definition sections and interpretation clauses are to be carefully followed.").

Moreover, comparison with Alabama's other dealer-protectionist statutes buttresses the instant interpretation of AHEDA's remedial provision. One of the other statutes, the Sale of Recreational Vehicles Act, expressly limits its civil suit provision to dealers, manufacturers, distributors, or warrantors "injured by another party's violation" of its**[\*15]** terms. [*Ala. Code § 8-21C-11(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70SK-00000-00&context=). That AHEDA extends its civil suit provision to "any person" indicates the Alabama's legislature's intent to broaden access to the remedy beyond dealers and suppliers, as contrasted with the Sale of Recreational Vehicles Act.

The other two statutes — The [*Motor Vehicle Franchise Act*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70KY-00000-00&context=) and The Tractor, Lawn and Garden and Light Industrial Equipment Franchise Act — both provide that "any person who is injured in his business or property by a violation" of their terms, by unfair and/or deceptive trade practices, or for refusing to agree to an arrangement which would violate their provisions, may bring a civil action. [*Ala. Code § 8-20-11*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70MR-00000-00&context=); [*§ 8-21A-12*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70PH-00000-00&context=). The latter statute provides that its remedial provision section "applies equally to both manufacturers and dealers." Again, that AHEDA's remedial provision applies more broadly to "any person who suffers bodily injury, loss of profit, or property damage," [*§ 8-21B-13*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70RK-00000-00&context=), without any further qualification, indicates the Alabama legislature's intent to broaden the class of persons who may take advantage of this protectionist legislation.

The foregoing exposition does not end the analysis of the AHEDA claim, however, because defendant also contends plaintiffs failed to plausibly plead**[\*16]** a loss of profits. The plaintiffs claim the loss of a "financial benefit" in the complaint's averment for damages, yet defendant argues this averment violates the plausibility standard.

As an initial matter, prevailing equitable considerations arguably estop defendant from even lodging this contention. In its notice removing this case to federal court, defendant stated that this action met the amount-in-controversy requirement because plaintiffs' "loss of the financial benefit of the sale of a business interest in excess of $3.8 million" was "apparent from the face of the Complaint." (Doc. 1 at 5). The defendant proceeded to infer that plaintiffs' "loss of profits or business opportunities" constituted "damages satisfying section [*28 U.S.C.] § 1332*'s amount in controversy requirement." *Id.* (citing [*Holley Equip. Co. v. Credit Alliance Corp., 821 F.2d 1531, 1536 (11th Cir. 1987))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-8SC0-001B-K1DM-00000-00&context=). The court deems defendant's removal arguments as inconsistent with its dismissal entreaty in the motion at bar, and therefore, the doctrine of judicial estoppel arguably applies to foreclose defendant's contention on this issue. *See* [*Stephens v. Tolbert, 471 F.3d 1173, 1177 (11th Cir. 2006)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4MH3-2FN0-0038-X0GS-00000-00&context=) ("A district court may invoke the [judicial estoppel] doctrine "to prevent a party from asserting a claim in a legal proceeding that is inconsistent with a claim taken by that**[\*17]** party in a previous proceeding.") (citation omitted).[[6]](#footnote-5)7

In any event, the court follows the defendant's cue in its Notice of Removal and finds that the plaintiffs plausibly pleaded their AHEDA claim for loss of profits. Plaintiff's averment for loss of profits emanates from the "loss of the financial benefit of the sale of a business interest in excess of $3.8 million." The court reasonably infers from this averment that plaintiffs would not undertake such an investment without the expectation that they would profit from the endeavor. Furthermore, the court presumes that review of LSI's financial records, and/or other such evidence, may reasonably establish the extent of those alleged profits,**[\*18]** subject to a finding of liability on the substantive AHEDA claim.

The defendant misplaces its reliance upon [*Simpson v. Sanderson Farms, Inc., 744 F.3d 702 (11th Cir. 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5BNY-S7S1-F04K-X2JY-00000-00&context=), as that decision actually bolsters the assessment at bar. In *Simpson*, the Eleventh Circuit reviewed whether the plaintiffs plausibly pleaded an "injury to business or property," as required for plaintiffs' claims pursuant to the [*Racketeer Influenced and Corrupt Organizations (RICO) Act, 18 U.S.C. §§ 1961-68*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GTW1-NRF4-40PD-00000-00&context=). [*744 F.3d at 708-09*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5BNY-S7S1-F04K-X2JY-00000-00&context=). The precise issue involved whether plaintiffs pleaded depressed wages — as an admitted form of injury to business interests — with the requisite factual specificity under the plausibility standard. [*Id. at 709*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5BNY-S7S1-F04K-X2JY-00000-00&context=). The Court found that the plaintiffs' wages actually rose based upon data in the amended complaint, and the plaintiffs failed to aver any market data or direct evidence of lost profits supporting their theory that their wages would have been higher but for alleged RICO activity. [*Id. at 709-12*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5BNY-S7S1-F04K-X2JY-00000-00&context=).

Notably, the Court also stated that the amended complaint failed to "state or even suggest that the plaintiffs' wages decreased [] or even increased at a slower rate" after commencement of the alleged RICO activity. [*Id. at 709*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5BNY-S7S1-F04K-X2JY-00000-00&context=) (citing [*Lehrman v. Gulf Oil Corp., 500 F.2d 659, 667 (5th Cir. 1974)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-V5K0-0039-X2J1-00000-00&context=) (explaining that a plaintiff can establish injury by "compar[ing] the plaintiff's profit record**[\*19]** prior to the violation with that subsequent to it")).[[7]](#footnote-6)8 As reflected, the Court indicates that plaintiffs may satisfy the plausibility standard by averring the loss of pecuniary interests after the advent of alleged wrongful conduct. Surely, the plaintiffs' averments at bar — that they "suffered damages, including loss of the financial benefit of the proposed transaction," as well as "compensatory, consequential, and incidental damages, punitive damages, attorneys' fees and costs," as "a result of UniCarriers' wrongful withholding of consent" (Doc. 1-1 at 8) — satisfy [*Simpson*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5BNY-S7S1-F04K-X2JY-00000-00&context=)'s guidance as to the requisite factual specificity satisfying the plausibility standard regarding damage averments. Coupled with the plausible inference that plaintiffs would expect profits from a $3.8 million business investment, the plaintiffs sustain their burden at this stage of the case.

Finally on this issue, the defendant argues in the response in support of its motion that plaintiffs failed to specifically plead lost profits as an item of special damages, as purportedly required by [*Rule 9(g), Federal Rules of Civil Procedure*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YN-00000-00&context=), and Alabama law. The court need proceed no further than [*Rule 9(g)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YN-00000-00&context=), which merely requires that "an item of special damage . .**[\*20]** . must be specifically stated." *See* [*Great Am. Indem. Co. v. Brown, 307 F.2d 306, 308 (5th Cir. 1962)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3JM0-0039-Y51B-00000-00&context=) ("Great American contends that [[*Rule 9(g)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YN-00000-00&context=)] requires that the plaintiff plead the amount as well as the type of any special damage claim. It would be more accurate to say that the rule is designed to inform defending parties as to the nature of the damages claimed in order to avoid surprise; and to inform the court of the substance of the complaint.") (citation omitted); [*Brennan v. City of Minneola, Fla., 723 F.Supp. 1442, 1444 (M.D. Fla. 1989)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4N-CSK0-0054-41W9-00000-00&context=) ([*Rule 9(g)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YN-00000-00&context=) "requires no more than a specific statement that allows defendants to prepare a responsive pleading and begin their defense."); [*Leavitt v. Cole, 291 F. Supp. 2d 1338, 1344 (M.D. Fla. 2003)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4B1S-DWK0-0038-Y19X-00000-00&context=) ("This Court thus views [*Rule 9(g)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YN-00000-00&context=) as concerned with giving proper notice of certain types of damage.") (footnote omitted); *c.f.*, 5A Fed. Prac. & Proc. Civ. § 1312 (3d ed.) ("[I]t seems more accurate to say it is easier to satisfy the "specifically stated" requirement of [*Rule 9(g)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YN-00000-00&context=) than the "particularity" standard of [*Rule 9(b)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YN-00000-00&context=)). The plaintiffs specifically pleaded relief for loss of profits under AHEDA, so they satisfy [*Rule 9(g)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YN-00000-00&context=)'s standard.[[8]](#footnote-7)9

Based on the foregoing analyses, the court DENIES defendant's Motion to Dismiss as to plaintiffs' AHEDA cause of action.

**Plaintiffs' Tortious Interference with Business Relations Claim Fails Because Defendant is not a Stranger to the Transaction**

The defendant**[\*21]** argues that the court should dismiss plaintiffs' tortious interference with business relations claim because first, plaintiff did not plausibly aver an appropriate business relationship, and second, defendant is not a stranger to the purported deal between plaintiffs and Gray. The court accepts defendant's second contention and dismisses this claim accordingly.

The claim for tortious interference with a business relationship contains the following elements: "(1) the existence of a protectable business relationship; (2) of which the defendant knew; (3) to which the defendant was a stranger; (4) with which the defendant intentionally interfered; and (5) damage." [*White Sands Group, L.L.C. v. PRS II, LLC, 32 So.3d 5, 14 (Ala. 2009)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4X5S-BWS0-TXFK-02YS-00000-00&context=).

Defendant contends plaintiffs failed to plead the existence of a valid contractual or business relationship between themselves and LSI/Gray. According to plaintiffs' complaint, plaintiffs agreed with LSI and Gray to buy LSI. This agreement passes muster for a tortious interference claim as it is a protectable business relationship pursuant to applicable standards.

A valid, tortious interference claim comprises interference with a contractual relationship or a business relationship. As the Alabama Supreme Court stated in *White****[\*22]*** *Sands*:

In Alabama, "'protection is appropriate against improper interference with reasonable expectancies of commercial relations even when an existing contract is lacking.'" [*Ex parte Alabama Dep't of Transp., 764 So.2d at 1270*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3YPD-40R0-0039-4355-00000-00&context=) (citing [*Restatement (Second) of Torts § 766B cmt. c*](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:42JH-HPR0-00YF-T12P-00000-00&context=) (1979)). Indeed, "[i]t is not necessary that the prospective relation be expected to be reduced to a formal, binding contract." [*Restatement § 766B cmt. c*](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:42JH-HPR0-00YF-T12P-00000-00&context=). "It is the right to do business in a fair setting that is protected." [*Utah Foam, 584 So.2d at 1353*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RX3-XDR0-003C-91GT-00000-00&context=).

However, "greater protection is given to the interest in an existing contract than to the interest in acquiring prospective contractual relations." [*Restatement § 767 cmt. j*](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:42JH-HPR0-00YF-T12S-00000-00&context=). The existence of a binding contract is one factor for consideration in the "determination of whether the actor's conduct is improper." *Id.* Thus, the inquiry in this tort is "which interests along the *continuum* of business dealings are protected." Orrin K. Ames III, *Tortious Interference with Business Relationships: The Changing Contours of this Commercial Tort*, [*35 Cumb. L.Rev. 317, 330 (2004-2005)*](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:4GJV-1XK0-00CW-40CM-00000-00&context=) (emphasis added). The question, in other words, is when has "an expectancy . . . matured to the stage that it is deemed worthy of protection from interference." [*Id. at 331*](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:4GJV-1XK0-00CW-40CM-00000-00&context=).

[*White Sands, 32 So.3d at 14-15*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4X5S-BWS0-TXFK-02YS-00000-00&context=). Thus, even absent a valid contract between plaintiffs and LSI/Gray, an expectant business relationship still existed with which**[\*23]** plaintiffs contend defendant interfered. This averment satisfies the standard.

However, defendant hits the mark with its contention that plaintiffs fail to state a claim for "tortious interference" because defendant was not a stranger to the expectant business relationship.

The Alabama Supreme Court comprehensively discussed the "stranger" requirement for an intentional interference claim in [*Waddell & Reed, Inc. v. United Investors Life Ins. Co., 875 So.2d 1143 (Ala. 2003)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:490R-GBM0-0039-43XN-00000-00&context=). After noting that a party to a contract or business relationship clearly cannot be liable for tortious interference with that relationship, the court declared that a defendant need not be a signatory to the subject contract or one of the business relationship's primary actors to be a party to the agreement; "[a] defendant is a party in interest to a relationship if the defendant has any beneficial or economic interest in, or control over, that relationship." [*875 So.2d at 1154*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:490R-GBM0-0039-43XN-00000-00&context=).[[9]](#footnote-8)12

Ultimately, the *Waddell & Reed* Court summarized its analysis of the stranger requirement as follows:

For the sake of clarity, we adopt the term "participant" to describe an individual or entity who is not a party, but who is essential, to the allegedly injured relationship and who cannot be described as a stranger. One cannot be guilty**[\*24]** of interference with a contract even if one is not a party to the contract so long as one is a participant in a business relationship arising from interwoven contractual arrangements that include the contract. In such an instance, the participant is not a stranger to the business relationship and the interwoven contractual arrangements define the participant's rights and duties with respect to the other individuals or entities in the relationship. If a participant has a legitimate economic interest in and a legitimate relationship to the contract, then the participant enjoys a privilege of becoming involved without being accused of interfering with the contract.

[*875 So.2d at 1157*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:490R-GBM0-0039-43XN-00000-00&context=).[[10]](#footnote-9)13

Based upon the foregoing exposition, the defect in plaintiffs' tortious interference claim manifests. The agreement between defendant and LSI requires LSI to obtain defendant's approval for any sale of LSI. No sale can occur absent such consent. These circumstances constitute interwoven contractual arrangements rendering defendant a participant in plaintiffs' business relationship with LSI/Gray. In addition, defendant possesses a legitimate economic interest in and legitimate relationship to the proposed agreement because defendant distributes its product lines through LSI. Defendant cited plaintiffs' lack of experience and failure to provide financial statements as reasons for its refusal, evincing concern about LSI's continued viability under plaintiffs'**[\*26]** ownership. Therefore, the court finds UniCarriers was not a stranger to the business relationship between plaintiffs and LSI, and thus, plaintiffs fail to plausibly plead a claim for tortious interference.

**Conclusion**

Based on the foregoing analyses, the court **ORDERS** that defendant's Motion is granted in part and denied in part. The court **DENIES** the defendant's motion as to plaintiffs' AHEDA claim and **GRANTS** defendant's motion as to plaintiffs' tortious interference with business relations claim.

DONE this 8th day of January, 2018.

/s/ Herman N. Johnson, Jr.

HERMAN N. JOHNSON, JR.

UNITED STATES MAGISTRATE JUDGE

**End of Document**

1. 1The court previously consolidated this action on the parties' motion with *Lift Service, Inc., et al. v. UniCarriers Americas Corp.*, Case No. 3:16-cv-00327-HNJ. In that action, Lift Service, Inc., and Dennis Gray contend UniCarriers violated the Alabama Heavy Equipment Dealer Act and committed tortious interference with their business relationship by unreasonably withholding consent to the sale of Lift Service to the Crowdens. [↑](#footnote-ref-0)
2. 3*See also* Gary W. Leydig, *Survey of State Dealer Laws* 1, https://www.leydiglaw.com/wp-content/uploads/2017/06/Survey-Of-State-Dealer-Laws.pdf:

   [T]he numerous statutes affecting dealerships have one common denominator. All are intended to afford dealers certain rights and remedies that they would not necessarily possess if left with only the terms of their dealership agreements to turn to.**[\*8]** These statutes are all, to one degree or another, protectionist legislation . . . .

   *Id.*; *c.f.*, W. Michael Garner et al., *Special Industry Relationship Statutes: PMPA, Auto Dealers, Beer Distributors and Heavy Equipment Dealers*, A.B.A. 37th Annual Forum on Franchising, at 1 (October 15, 201), *available at* https://www.americanbar.org/content/dam/aba/administrative/franchising/materials2014/w5.aut hcheckdam.pdf:

   Laws governing the relationship between automobile dealers and manufacturers, brewers and beer distributors, refiners and gasoline dealers and manufacturers and equipment dealers have both striking parallels and instructive variations to relationship laws in business format franchising. Indeed, ***regulation*** of the relationship between automobile dealers and manufacturers pioneered the concept of good cause for termination or nonrenewal and the policy of leveling the playing field between franchisors and franchisees long before business format franchising was ubiquitous. Furthermore, relationship laws in these special industries are far more pervasive than in business format franchising.

   *Id.* [↑](#footnote-ref-1)
3. 4*See also* Matthew Moloshok, *Constraints Against Termination of Dealers and Franchisees*, The ***Antitrust*** Source 2-3 (ABA Sect. ***Antitrust*** L. Jan. 2005), *available at* https://www.americanbar.org/content/dam/aba/publishing/***antitrust***\_source/06\_Jan05\_moloshok .authcheckdam.pdf ("Congress, state legislatures, and courts have chosen to fashion protections against termination for certain groups of franchisees and dealers. . . . The lore of franchise and dealership protection seems to turn on a model of a small, family business that is about to be shunted aside for arbitrary, inconsequential reasons."); Leydig, *supra* note 3, at 1 ("These statutes are all, to one degree or another, protectionist legislation -- created to compensate for the real or perceived lack of bargaining equality between dealers and their suppliers."). [↑](#footnote-ref-2)
4. 5*See* Garner et al, *supra* n. 3, at 1 ("The Federal [*Petroleum Marketing Practices Act*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GPR1-NRF4-411R-00000-00&context=) applies in all states and territories; 49 of the 50 states have automobile legislation; virtually all states ***regulate*** the distribution of beer, wine and spirits; and 45 states ***regulate*** either farm equipment dealers or heavy equipment dealers."); Moloshok, *supra* note 4, at 4 ("[F]orty-eight states have statutes protecting [motor vehicle dealers], . . . [and] states sometimes have statutes similar to the motor vehicle dealer laws to protect dealers in specific industries—commonly beer and wine wholesalers, and farm or heavy equipment dealers."). [↑](#footnote-ref-3)
5. 6The Act defines a "dealer" as a "person, corporation, partnership, or other business entity primarily engaged in the business of retail sales or leasing of heavy equipment and heavy equipment parts and who has an established place of business in this state." [*Ala. Code § 8-21B-3(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70PW-00000-00&context=). Of course, plaintiffs do not qualify as dealers under this provision because they do not presently engage in heavy equipment sales or leasing. The gravamen of their action reflects they attempted to do so. [↑](#footnote-ref-4)
6. 7Courts traditionally examine three factors to ascertain equitably whether judicial estoppel applies to a party's conduct in an action:

   (1) whether a later position asserted by a party was clearly inconsistent with an earlier position; (2) whether a party succeeded in persuading a court to accept an earlier position, "so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled"; and (3) whether the party with an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

   [*Stephens v. Tolbert, 471 F.3d 1173, 1177 (11th Cir. 2006)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4MH3-2FN0-0038-X0GS-00000-00&context=) (citation omitted).

   One will not belabor the inquiry as there exist other reasons for rejecting defendant's dismissal motion as to plaintiffs' damages averment, yet the circumstances demonstrate that defendant took clearly inconsistent positions as to the efficacy of plaintiffs' damages averment; defendant prevailed on its earlier position because it succeeded in removing this case to federal court; and plaintiffs would suffer an unfair detriment if their damages averment sufficed for subject matter jurisdiction and removal but falters as to the plausibility standard. [↑](#footnote-ref-5)
7. 8In [*Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-Y7N0-0039-W22N-00000-00&context=) (*en banc*), the Eleventh Circuit adopted as binding precedent all Fifth Circuit decisions issued before October 1, 1981. [↑](#footnote-ref-6)
8. 9Indeed, under [*Rule 9(g)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YN-00000-00&context=) "there is a distinction between cases in which special damage is essential to a cause of action as a matter of substantive law, and cases in which a cause of action exists irrespective of special damage. In the latter type of case, the failure to allege specific damages does not preclude recovery except as to the insufficiently pleaded special damages." 4 Cyc. of Federal Proc. § 14:285 (3d ed.) (citations omitted); *see also* 5A Fed. Prac. & Proc. Civ. § 1311 (3d ed.) ("When special damages are sought that simply are in addition to the general damages that the law allows, the specific allegation requirement can be satisfied easily.") (citation omitted). Because AHEDA states that the "remedies set forth in this section shall not be deemed exclusive and shall be in addition to any other remedies permitted by law," [*Ala. Code § 8-21B-13*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPF1-6RDJ-70RK-00000-00&context=), and plaintiffs averred entitlement to various forms of damages, the plaintiffs do not need to satisfy the plausibility standard as to loss of profits to sustain their substantive AHEDA claim. [↑](#footnote-ref-7)
9. 12A "defendant is a party in interest to a business or contractual relationship if the defendant has any beneficial or economic interest in, or control over, that relationship." [*Edwards v. Prime, Inc., 602 F.3d 1276, 1302 (11th Cir. 2010)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7Y6G-C1B0-YB0V-S089-00000-00&context=) (quoting [*Tom's Foods, Inc. v. Carn, 896 So.2d 443, 454 (Ala. 2004))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4D4M-FB00-0039-44HN-00000-00&context=). "When the defendant is an essential party to the allegedly injured business relationship, the defendant is a participant in that relationship instead of a stranger to it." [*Edwards, 602 F.3d at 1302*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7Y6G-C1B0-YB0V-S089-00000-00&context=) (citations omitted); *see also* [*MAC East, LLC v. Shoney's, 535 F.3d 1293, 1297 (11th Cir. 2008)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4T2J-XX00-TX4N-G13X-00000-00&context=) (under Alabama law, "[a] defendant is not a stranger to a contract or business relationship when (1) the defendant is an essential entity to the purported injured relations; (2) the allegedly injured relations are inextricably a part of or dependent upon the defendant's contractual or business relations; . . . or (4) both the defendant and the plaintiff are parties to a comprehensive interwoven set of contract or relations") (citations omitted); [*BellSouth Mobility, Inc. v. Cellulink, Inc., 814 So.2d 203, 214 (Ala. 2001)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:435C-76R0-0039-44PS-00000-00&context=) (where a contract would not have been consummated without the participation of a certain party, that party is "anything but a stranger to the relationship"). [↑](#footnote-ref-8)
10. 13The *Waddell & Reed* Court relied heavily on Georgia law in defining the stranger requirement, including [*LaSonde v. Chase Mortg. Co., 259 Ga.App. 772, 577 S.E.2d 822 (2003)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:47VB-6T70-0039-441P-00000-00&context=). In *LaSonde*, plaintiff, a prospective, property purchaser, sued Chase Mortgage for refusing to permit plaintiff to assume a mortgage loan on the subject property. The Georgia court held:

    A tortious interference claim requires, among other things, wrongful conduct by the defendant without privilege; "privilege" means legitimate economic interests of the defendant or a legitimate relationship of the defendant to the contract, so that he is not considered a stranger, interloper, or meddler. A person with a direct economic interest in the contract is not a stranger to the contract. Parties to an interwoven contractual arrangement are not liable for tortious interference with any of the contracts**[\*25]** or business relationships.

    It is clear that Chase Mortgage was not a stranger to the sales contract between LaSonde and McGregor. Chase Mortgage held the note and security deed to the property at issue. Indeed, Chase Mortgage was responsible for deciding whether to permit McGregor or LaSonde to assume the loan on the property. Chase Mortgage had a direct economic interest in the property which was the subject of the sales contract.

    [*259 Ga.App. at 773-74, 577 S.E.2d at 824*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:47VB-6T70-0039-441P-00000-00&context=) (footnotes omitted). This case bears strong resemblance to the [*LaSonde*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:47VB-6T70-0039-441P-00000-00&context=) case. [↑](#footnote-ref-9)