

## SECRET WARDLE SUCCESS STORIES

**ATTORNEY:** Matthew J. Consolo, Senior Partner

**TYPE OF CASE:** Section 1983

**COURT/CASE #:** United States District Court, Eastern District, Southern Division / 25-cv-10930

**DATE OF DISPOSITION:** March 24, 2026

**NAME OF JUDGE(S):** Hon. Susan K. DeClercq

**VERDICT/SETTLEMENT AMOUNT:** Dismissed via Motion to Dismiss

**KEYS TO THE CASE:**

**BACKGROUND**

Hassan Fayad owned and operated Michigan no-fault medical provider businesses since 2017. In January 2020, Progressive, Liberty Mutual, Allstate, and Esurance jointly filed a fraud complaint with the Michigan Department of Attorney General (MDAG), alleging Fayad's businesses billed for services never rendered or not medically necessary.

Following investigation by MDAG Special Investigator Karen Fairley and Assistant AG Keisha Glenn, Fayad was arrested and charged in Macomb County Circuit Court in April 2023 with conspiracy to commit false pretenses, conducting a criminal enterprise, and insurance fraud as a third-time habitual offender. In October 2024, the circuit court quashed all charges for lack of probable cause. A separate federal criminal conviction was also vacated by stipulation in December 2024.

In April 2025, Fayad sued Progressive and the other insurer defendants, along with Fairley and Glenn personally, alleging they conspired to wrongfully prosecute and arrest him.

**CLAIMS ASSERTED**

*Fayad brought six counts:*

1. False arrest under 42 U.S.C. § 1983
2. Malicious prosecution under § 1983
3. Due process violation under § 1983
4. Civil conspiracy under § 1983
5. Malicious prosecution under Michigan law
6. Gross negligence (against Fairley only)

## COURT'S RULING

### *Civil Conspiracy Claim Failed (Count IV)*

The court identified the conspiracy claim as the linchpin of Fayad's entire case. Because Progressive is a private entity, not a state actor, § 1983 liability required proving Progressive conspired with state actors Glenn and Fairley to violate constitutional rights. The court applied the three-element test from *Memphis v. City of Memphis*, 361 F.3d 898 (6th Cir. 2004), requiring: (1) a single plan, (2) shared objective to deprive constitutional rights, and (3) overt act in furtherance of the conspiracy.

#### **The court held all three elements deficient:**

- **Element One:** Fayad merely stated Defendants "had a single plan" without any specific facts about the plan's nature or formation—a bare legal conclusion insufficient under *Twombly*.
- **Element Two:** Fayad recited that Defendants conspired to deprive him of Fourth, Fifth, and Fourteenth Amendment rights, but provided no factual content explaining why insurers would share that objective.
- **Element Three:** Fayad alleged Progressive provided "false and/or misleading information" to the MDAG but failed to identify what specific false statements were made. The court held that dismissal of state charges for lack of probable cause does not automatically render the insurers' fraud complaint false.

The court cited *Matthews v. Blue Cross*, 572 N.W.2d 603 (Mich. 1998), and *Moldowan v. City of Warren*, 578 F.3d 351 (6th Cir. 2009), for the principle that **filing a complaint with law enforcement does not confer liability on the filer when the prosecutor independently decides to initiate prosecution**. The conspiracy claim was dismissed under Rule 12(b)(6) for failure to state a claim.

### All § 1983 Claims Dismissed (Counts I-III)

With the conspiracy claim dismissed, the § 1983 claims for false arrest, malicious prosecution, and due process violations failed as a matter of law. Private insurance companies are not state actors under § 1983. Without a viable conspiracy allegation, there was no basis to treat Progressive as having acted under color of state law.

### State Law Malicious Prosecution Declined (Count V)

Having dismissed all federal claims, the court exercised discretion under 28 U.S.C. § 1367(c)(3) to decline supplemental jurisdiction over the remaining Michigan malicious prosecution claim. This claim was **dismissed without prejudice**, meaning Fayad could theoretically refile in state court.

However, the court noted such efforts would likely be "futile" given that *Matthews* establishes a prosecutor's independent exercise of discretion as a complete defense to malicious prosecution claims against the complaining insurer.

### *Claims Against State Actors Dismissed*

All claims against MDAG Investigator Fairley and Assistant AG Glenn were also dismissed. Glenn received absolute prosecutorial immunity for charging, obtaining the arrest warrant, and seeking the asset freeze—all prosecutorial functions. Fairley received qualified immunity because she relied on a judicially secured arrest warrant supported by a detailed affidavit not "so lacking in indicia of probable cause" as to be unreasonable.

### *PROCEDURAL NOTES*

Fayad requested leave to amend his complaint in a footnote to his response brief. The court denied this request as procedurally improper under E.D. Mich. L.R. 7.1(i), requiring a formal motion. This denial forecloses Fayad from curing pleading deficiencies on the federal claims, which are dismissed **with prejudice**.

### *IMPLICATIONS*

This is a complete defense victory with no residual federal exposure. The case is closed in federal court. No monetary judgment was entered against Progressive. The only potential exposure is the state law malicious prosecution claim (Count V), dismissed without prejudice, which could be refiled in Michigan state court. However, based on controlling Michigan authority cited by the court, such claims face significant legal obstacles and are unlikely to succeed given the prosecutor's independent exercise of discretion.

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