

Case No. 12-14794-FF

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

GARDITH S. LEMY, et al., etc.,

Plaintiffs-Appellants,

v.

DIRECT GENERAL FINANCE
COMPANY, et al.,

Defendants-Appellees.

**Appeal from the United States District Court
for the Middle District of Florida**

**APPENDIX TO AMICUS BRIEF OF UNITED POLICYHOLDERS IN
SUPPORT OF MOTION FOR REHEARING**

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent by email, pursuant to the written consent of counsel for Appellees, this 10th day of April, 2014, to:

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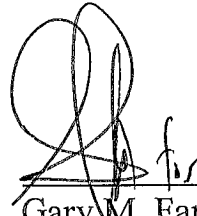
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A

APPEAL, CLOSED, MEDIATION

**U.S. District Court
Middle District of Florida (Tampa)
CIVIL DOCKET FOR CASE #: 8:11-cv-02722-SDM-AEP**

Lemy et al v. Direct General Finance Company et al
Assigned to: Judge Steven D. Merryday
Referred to: Magistrate Judge Anthony E. Porcelli
Case in other court: 13th Judicial Circuit, Hillsborough
County, FL, 09-CA-021301, Div D
11th Circuit, 12-14794-F
Cause: 28:1332 Diversity-Breach of Contract

Date Filed: 12/08/2011
Date Terminated: 06/20/2012
Jury Demand: Plaintiff
Nature of Suit: 110 Insurance
Jurisdiction: Diversity

Plaintiff

Gardith S. Lemy
*individually, and o/b/o all those
similarly situated*

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Date Filed	#	Docket Text
12/08/2011	<u>1</u>	NOTICE OF REMOVAL from 13th Judicial Circuit in and for Hillsborough County, FL, case number 09-CA-021301, Div. D filed in State Court on 11/10/2011. Filing fee \$ 350, receipt number TPA filed by NSD Group, LLC, Nation Safe Drivers, LLC, Direct General Finance Company, National Adjustment Bureau, Inc., Mitchel Kalmanson, Direct General Insurance Agency, Direct General Insurance Company, Certain Underwriters at Lloyds, London, Lester Kalmanson Agency, Inc., Nation Motor Club, Inc. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Exhibit)(BSN) (Entered: 12/09/2011)
12/08/2011	<u>2</u>	THIRD AMENDED COMPLAINT against Certain Underwriters at Lloyds, London, Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company, Mitchel Kalmanson, Lester Kalmanson

		Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, inc. with Jury Demand filed by Marilyn Hill, Gardith S. Lemy. Originally filed in state court on 11/10/11.(BSN) (Entered: 12/09/2011)
12/08/2011	<u>3</u>	AFFIDAVIT of Lisa M. Robison re: <u>1</u> Notice of removal by Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company. (BSN) (Entered: 12/09/2011)
12/08/2011	<u>5</u>	MOTION to compel arbitration, MOTION to transfer case filed in State Court on 4/15/2009 by Direct General Finance Company. (DMS) (Entered: 12/12/2011)
12/08/2011	<u>6</u>	MOTION for attorneys' fees filed in State Court on 6/5/2009 by Gardith S. Lemy. (DMS) (Entered: 12/12/2011)
12/12/2011	<u>4</u>	MOTION to dismiss Plaintiffs' Third Amended Class Action Complaint and Demand for Jury Trial by Certain Underwriters at Lloyds, London. (Attachments: # <u>1</u> Exhibit "A", # <u>2</u> Exhibit "B")(McLean, Patricia) (Entered: 12/12/2011)
12/12/2011	<u>7</u>	NOTICE of filing Exhibits: County Court Record re <u>1</u> Notice of removal by Certain Underwriters at Lloyds, London, Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company, Gardith S. Lemy, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12, # <u>13</u> Exhibit 13, # <u>14</u> Exhibit 14, # <u>15</u> Exhibit 15, # <u>16</u> Exhibit 16, # <u>17</u> Exhibit 17, # <u>18</u> Exhibit 18, # <u>19</u> Exhibit 20, # <u>20</u> Exhibit 21, # <u>21</u> Exhibit 22, # <u>22</u> Exhibit 23, # <u>23</u> Exhibit 24, # <u>24</u> Exhibit 25, # <u>25</u> Exhibit 26, # <u>26</u> Exhibit 27, # <u>27</u> Exhibit 28, # <u>28</u> Exhibit 29, # <u>29</u> Exhibit 30, # <u>30</u> Exhibit 31, # <u>31</u> Exhibit 33, # <u>32</u> Exhibit 34, # <u>33</u> Exhibit 35)(DMS) (Entered: 12/12/2011)
12/12/2011	<u>8</u>	NOTICE of filing Exhibits: Circuit Court Record Exhibits 1-50 re <u>1</u> Notice of removal by Certain Underwriters at Lloyds, London, Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc. (Attachments: # <u>1</u> Exhibit Pleadings Index 2 of 3, # <u>2</u> Exhibit Pleadings Index 3 of 3, # <u>3</u> Exhibit 1, # <u>4</u> Exhibit 2, # <u>5</u> Exhibit 3, # <u>6</u> Exhibit 4, # <u>7</u> Exhibit 5, # <u>8</u> Exhibit 6, # <u>9</u> Exhibit 7, # <u>10</u> Exhibit 8, # <u>11</u> Exhibit 9, # <u>12</u> Exhibit 10, # <u>13</u> Exhibit 11, # <u>14</u> Exhibit 12, # <u>15</u> Exhibit 13, # <u>16</u> Exhibit 14, # <u>17</u> Exhibit 15, # <u>18</u> Exhibit 16, # <u>19</u> Exhibit 17, # <u>20</u> Exhibit 18, # <u>21</u> Exhibit 19, # <u>22</u> Exhibit 20, # <u>23</u> Exhibit 21, # <u>24</u> Exhibit 22, # <u>25</u> Exhibit 23, # <u>26</u> Exhibit 24, # <u>27</u> Exhibit 25, # <u>28</u> Exhibit 26, # <u>29</u> Exhibit 27, # <u>30</u> Exhibit 28, # <u>31</u> Exhibit 29, # <u>32</u> Exhibit 30, # <u>33</u> Exhibit 31, # <u>34</u> Exhibit 32, # <u>35</u> Exhibit 33, # <u>36</u> Exhibit 34, # <u>37</u> Exhibit 35, # <u>38</u> Exhibit 36, # <u>39</u> Exhibit 37, # <u>40</u> Exhibit 38, # <u>41</u> Exhibit 39, # <u>42</u> Exhibit 40, # <u>43</u> Exhibit 41, # <u>44</u> Exhibit 42, # <u>45</u>

		Exhibit 43, # <u>46</u> Exhibit 44, # <u>47</u> Exhibit 45, # <u>48</u> Exhibit 46, # <u>49</u> Exhibit 47, # <u>50</u> Exhibit 48, # <u>51</u> Exhibit 49, # <u>52</u> Exhibit 50) (DMS) (Entered: 12/12/2011)
12/13/2011	<u>9</u>	NOTICE of filing Exhibits: Circuit Court Record Exhibits 51-100 re <u>1</u> Notice of removal by Certain Underwriters at Lloyds, London, Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc. (Attachments: # <u>1</u> Exhibit 52, # <u>2</u> Exhibit 53, # <u>3</u> Exhibit 54, # <u>4</u> Exhibit 55, # <u>5</u> Exhibit 56, # <u>6</u> Exhibit 57, # <u>7</u> Exhibit 58, # <u>8</u> Exhibit 59, # <u>9</u> Exhibit 60, # <u>10</u> Exhibit 61, # <u>11</u> Exhibit 63, # <u>12</u> Exhibit 64, # <u>13</u> Exhibit 65, # <u>14</u> Exhibit 66, # <u>15</u> Exhibit 67, # <u>16</u> Exhibit 68, # <u>17</u> Exhibit 69, # <u>18</u> Exhibit 70, # <u>19</u> Exhibit 71a, # <u>20</u> Exhibit 71b, # <u>21</u> Exhibit 71c, # <u>22</u> Exhibit 72, # <u>23</u> Exhibit 73, # <u>24</u> Exhibit 74, # <u>25</u> Exhibit 75, # <u>26</u> Exhibit 76, # <u>27</u> Exhibit 77, # <u>28</u> Exhibit 78, # <u>29</u> Exhibit 79, # <u>30</u> Exhibit 80, # <u>31</u> Exhibit 81, # <u>32</u> Exhibit 82, # <u>33</u> Exhibit 83, # <u>34</u> Exhibit 84, # <u>35</u> Exhibit 85, # <u>36</u> Exhibit 86, # <u>37</u> Exhibit 87, # <u>38</u> Exhibit 88, # <u>39</u> Exhibit 89, # <u>40</u> Exhibit 90, # <u>41</u> Exhibit 91, # <u>42</u> Exhibit 92, # <u>43</u> Exhibit 93, # <u>44</u> Exhibit 94, # <u>45</u> Exhibit 95, # <u>46</u> Exhibit 96, # <u>47</u> Exhibit 97, # <u>48</u> Exhibit 98, # <u>49</u> Exhibit 99, # <u>50</u> Exhibit 100) (DMS) (Entered: 12/13/2011)
12/13/2011	<u>10</u>	NOTICE of filing Exhibits: Circuit Court Record Exhibits 101-150 re <u>1</u> Notice of removal by Certain Underwriters at Lloyds, London, Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc. (Attachments: # <u>1</u> Exhibit 102, # <u>2</u> Exhibit 103, # <u>3</u> Exhibit 104, # <u>4</u> Exhibit 105, # <u>5</u> Exhibit 106, # <u>6</u> Exhibit 107, # <u>7</u> Exhibit 108, # <u>8</u> Exhibit 109, # <u>9</u> Exhibit 110, # <u>10</u> Exhibit 111, # <u>11</u> Exhibit 112, # <u>12</u> Exhibit 113, # <u>13</u> Exhibit 115, # <u>14</u> Exhibit 116, # <u>15</u> Exhibit 117, # <u>16</u> Exhibit 118, # <u>17</u> Exhibit 119, # <u>18</u> Exhibit 120, # <u>19</u> Exhibit 122, # <u>20</u> Exhibit 123, # <u>21</u> Exhibit 124, # <u>22</u> Exhibit 125, # <u>23</u> Exhibit 126, # <u>24</u> Exhibit 127, # <u>25</u> Exhibit 128, # <u>26</u> Exhibit 129, # <u>27</u> Exhibit 130, # <u>28</u> Exhibit 131, # <u>29</u> Exhibit 132, # <u>30</u> Exhibit 133, # <u>31</u> Exhibit 134, # <u>32</u> Exhibit 135, # <u>33</u> Exhibit 136, # <u>34</u> Exhibit 137, # <u>35</u> Exhibit 138, # <u>36</u> Exhibit 139, # <u>37</u> Exhibit 140, # <u>38</u> Exhibit 141, # <u>39</u> Exhibit 142, # <u>40</u> Exhibit 143, # <u>41</u> Exhibit 144, # <u>42</u> Exhibit 145, # <u>43</u> Exhibit 146, # <u>44</u> Exhibit 147, # <u>45</u> Exhibit 148, # <u>46</u> Exhibit 149, # <u>47</u> Exhibit 150) (DMS) (Entered: 12/13/2011)
12/13/2011	<u>11</u>	NOTICE of filing Exhibits: Circuit Court Record Exhibits 151-171 re <u>1</u> Notice of removal by Certain Underwriters at Lloyds, London, Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc. (Attachments: # <u>1</u> Exhibit 153, # <u>2</u> Exhibit 154, # <u>3</u> Exhibit 155, # <u>4</u> Exhibit 156, # <u>5</u> Exhibit 157, # <u>6</u> Exhibit 158, # <u>7</u> Exhibit 159, # <u>8</u> Exhibit 160, # <u>9</u>

		Exhibit 161, # <u>10</u> Exhibit 162, # <u>11</u> Exhibit 163, # <u>12</u> Exhibit 164, # <u>13</u> Exhibit 165, # <u>14</u> Exhibit 166, # <u>15</u> Exhibit 167, # <u>16</u> Exhibit 168, # <u>17</u> Exhibit 169, # <u>18</u> Exhibit 170, # <u>19</u> Exhibit 171) (DMS) (Entered: 12/13/2011)
12/15/2011	<u>12</u>	Unopposed MOTION to extend time to Respond to Defendants' Motions Until After Court Rules on Plaintiffs' Forthcoming Motion for Remand by All Plaintiffs. (Clark, James) (Entered: 12/15/2011)
12/15/2011	<u>13</u>	Unopposed MOTION for extension of time to file response/reply to the <i>Third Amended Complaint</i> by Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company. (Goodis, Jeffrey) Motions referred to Magistrate Judge Anthony E. Porcelli. (Entered: 12/15/2011)
12/16/2011	<u>14</u>	Unopposed MOTION for extension of time to file answer or otherwise plead re <u>2</u> Amended complaint by Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc.. (McLean, Patricia) (Entered: 12/16/2011)
12/16/2011	<u>15</u>	ENDORSED ORDER denying <u>12</u> the motion to extend time to respond to motions until after disposition of motion to remand. Signed by Judge Steven D. Merryday on 12/16/2011. (Entered: 12/16/2011)
12/16/2011	<u>16</u>	ENDORSED ORDER granting <u>13</u> the motion for extension through December 21, 2011, of the time to respond to the third amended complaint. Signed by Judge Steven D. Merryday on 12/16/2011. (Entered: 12/16/2011)
12/16/2011	<u>17</u>	ENDORSED ORDER granting <u>14</u> the motion of certain defendants for an extension until December 27, 2011, of the time to respond to the third amended complaint. Signed by Judge Steven D. Merryday on 12/16/2011. (Entered: 12/16/2011)
12/21/2011	<u>18</u>	MOTION to dismiss Plaintiffs' Third Amended Class Action Complaint by Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company. (Attachments: # <u>1</u> Appendix to Motion to Dismiss or Stay Plaintiffs' Third Amended Class Action Complaint, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G, # <u>9</u> Exhibit H, # <u>10</u> Exhibit I, # <u>11</u> Exhibit J, # <u>12</u> Exhibit K, # <u>13</u> Exhibit L, # <u>14</u> Exhibit M, # <u>15</u> Exhibit N)(Kunin, Lawrence) (Entered: 12/21/2011)
12/21/2011	<u>19</u>	MOTION for Lewis E. Hassett to appear pro hac vice by Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company. (Goodis, Jeffrey) Motions referred to Magistrate Judge Anthony E. Porcelli. (Entered: 12/21/2011)
12/22/2011		***PRO HAC VICE FEES paid and Special Admission Attorney Certification Form filed by attorney Lewis E. Hassett appearing on behalf of Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company (Filing fee \$10 receipt number TPA8885.) (PLL) (Entered: 12/22/2011)

12/22/2011	<u>20</u>	MOTION to dismiss Plaintiffs' Third Amended Complaint by Mitchel Kalmanson. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Remington, Bridget) (Entered: 12/22/2011)
12/22/2011	<u>21</u>	MOTION to dismiss Plaintiffs' Third Amended Complaint by NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Remington, Bridget) (Entered: 12/22/2011)
12/22/2011	<u>22</u>	MOTION to dismiss Plaintiffs' Third Amended Complaint by Lester Kalmanson Agency, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B) (Remington, Bridget) (Entered: 12/22/2011)
12/22/2011	<u>23</u>	MOTION to Remand to State Court by All Plaintiffs. (Attachments: # <u>1</u> Exhibit 1 - Deposition, # <u>2</u> Exhibit 3 - Non-Marine Binding Authority Agreement, # <u>3</u> Exhibit 6 - Articles of Merger, # <u>4</u> Exhibit 7 - Nation Safe Brochure, # <u>5</u> Exhibit 8 - Excerpts from Direct General 10-K)(Clark, James) (Entered: 12/22/2011)
12/23/2011	<u>24</u>	MOTION for leave to file under seal by All Plaintiffs. (Clark, James) (Entered: 12/23/2011)
12/23/2011	<u>25</u>	Unopposed MOTION for extension of time to file response/reply as to <u>4</u> MOTION to dismiss Plaintiffs' Third Amended Class Action Complaint and Demand for Jury Trial, <u>21</u> MOTION to dismiss Plaintiffs' Third Amended Complaint, <u>22</u> MOTION to dismiss Plaintiffs' Third Amended Complaint, <u>20</u> MOTION to dismiss Plaintiffs' Third Amended Complaint, <u>18</u> MOTION to dismiss Plaintiffs' Third Amended Class Action Complaint by All Plaintiffs. (Clark, James) Motions referred to Magistrate Judge Anthony E. Porcelli. (Entered: 12/23/2011)
12/23/2011		Sealed document S-1. (BSN) NOTE: Originals mailed to Counsel: James D. Clark, pursuant to Dkt. <u>27</u> Order on motion to seal. Modified on 12/28/2011 (LDB). (Entered: 12/23/2011)
12/27/2011	<u>26</u>	ENDORSED ORDER granting <u>25</u> --plaintiffs' motion to extend to <u>1/10/2012</u> the time within which to respond to motions to dismiss. Signed by Judge Steven D. Merryday on 12/27/2011. (BK) (Entered: 12/27/2011)
12/27/2011	<u>27</u>	ORDER denying <u>24</u> --motion to seal; directing the Clerk to RETURN submitted exhibits (Doc. S-1) to Gardith Lemy and marilyn Hill. Signed by Judge Steven D. Merryday on 12/27/2011. (BK) (Entered: 12/27/2011)
01/04/2012	<u>28</u>	NOTICE of designation under Local Rule 3.05 - track 2 (TKD) (Entered: 01/04/2012)
01/06/2012	<u>29</u>	Unopposed MOTION for leave to file excess pages by All Plaintiffs. (Clark, James) (Entered: 01/06/2012)
01/06/2012	<u>30</u>	Unopposed MOTION for extension of time to file response/reply as to <u>23</u> MOTION to Remand to State Court, Unopposed MOTION for leave to file excess pages by Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company. (Vitale, John) Motions referred

		to Magistrate Judge Anthony E. Porcelli. (Entered: 01/06/2012)
01/06/2012	<u>31</u>	Unopposed MOTION for leave to file Excess Pages to Respond to Plaintiffs' Motion for Remand and Motion for Extension of Time to Respond to Plaintiffs' Motion for Remand by Certain Underwriters at Lloyds, London, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc.. (McLean, Patricia) (Entered: 01/06/2012)
01/06/2012	<u>32</u>	ORDER granting <u>19</u> motion to appear pro hac vice. Signed by Magistrate Judge Anthony E. Porcelli on 1/6/2012. (MH) (Entered: 01/06/2012)
01/09/2012	<u>33</u>	NOTICE of Appearance by John D. Mullen on behalf of Certain Underwriters at Lloyds, London, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc. (Mullen, John) (Entered: 01/09/2012)
01/09/2012	<u>34</u>	Unopposed MOTION for extension of time to file response/reply as to <u>4</u> MOTION to dismiss Plaintiffs' Third Amended Class Action Complaint and Demand for Jury Trial, <u>21</u> MOTION to dismiss Plaintiffs' Third Amended Complaint, <u>22</u> MOTION to dismiss Plaintiffs' Third Amended Complaint, <u>20</u> MOTION to dismiss Plaintiffs' Third Amended Complaint, <u>18</u> MOTION to dismiss Plaintiffs' Third Amended Class Action Complaint by All Plaintiffs. (Clark, James) Motions referred to Magistrate Judge Anthony E. Porcelli. (Entered: 01/09/2012)
01/10/2012	35	ENDORSED ORDER granting <u>34</u> --plaintiffs' motion to extend the time within which to respond to motions to dismiss. Responses due <u>1/17/2012</u> Signed by Judge Steven D. Merryday on 1/10/2012. (BK) (Entered: 01/10/2012)
01/10/2012	36	ENDORSED ORDER granting <u>29</u> --motion by plaintiffs to submit a 30-page response. Signed by Judge Steven D. Merryday on 1/10/2012. (BK) (Entered: 01/10/2012)
01/10/2012	37	ENDORSED ORDER granting <u>30</u> --motion to extend to <u>1/12/2012</u> the time within which to respond to motion to remand. Response shall not exceed twenty-five pages. Signed by Judge Steven D. Merryday on 1/10/2012. (BK) (Entered: 01/10/2012)
01/10/2012	38	ENDORSED ORDER granting <u>31</u> --motion to extend to <u>1/12/2012</u> the time within which to respond to motion to remand. Response shall not exceed twenty-five pages. Signed by Judge Steven D. Merryday on 1/10/2012. (BK) (Entered: 01/10/2012)
01/10/2012	<u>39</u>	NOTICE of Appearance by Matthew Crist on behalf of Marilyn Hill, Gardith S. Lemy (Crist, Matthew) (Entered: 01/10/2012)
01/11/2012	<u>40</u>	Joint MOTION to Seal Document <u>23</u> MOTION to Remand to State Court <i>and to Redact Portions of Plaintiffs' Motion for Remand</i> by Certain Underwriters at Lloyds, London, Marilyn Hill, Mitchel Kalmanson, Gardith S. Lemy, Lester

		Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Remington, Bridget) (Entered: 01/11/2012)
01/11/2012	<u>41</u>	NOTICE by Marilyn Hill, Gardith S. Lemy re <u>23</u> MOTION to Remand to State Court <i>Plaintiffs' Notice of Filing</i> (Attachments: # <u>1</u> Exhibit #4 to Motion to Remand, # <u>2</u> Exhibit #5 to Motion to Remand)(Clark, James) (Entered: 01/11/2012)
01/12/2012	<u>42</u>	RESPONSE in opposition re <u>23</u> MOTION to Remand to State Court filed by Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I)(Vitale, John) (Entered: 01/12/2012)
01/12/2012	<u>43</u>	Unopposed MOTION to Seal Document <i>Second Affidavit of Lisa M. Robison</i> , Unopposed MOTION for protective order <i>Concerning the Second Affidavit of Lisa M. Robison</i> by Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Vitale, John) Motions referred to Magistrate Judge Anthony E. Porcelli. (Entered: 01/12/2012)
01/12/2012	<u>44</u>	MEMORANDUM in opposition re <u>23</u> Motion to Remand to State Court filed by Certain Underwriters at Lloyds, London, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E)(Remington, Bridget) (Entered: 01/12/2012)
01/17/2012	<u>45</u>	RESPONSE in opposition re <u>4</u> MOTION to dismiss Plaintiffs' Third Amended Class Action Complaint and Demand for Jury Trial, <u>21</u> MOTION to dismiss Plaintiffs' Third Amended Complaint, <u>22</u> MOTION to dismiss Plaintiffs' Third Amended Complaint, <u>20</u> MOTION to dismiss Plaintiffs' Third Amended Complaint filed by Marilyn Hill, Gardith S. Lemy. (Clark, James) (Entered: 01/17/2012)
01/17/2012	<u>46</u>	RESPONSE in opposition re <u>18</u> MOTION to dismiss Plaintiffs' Third Amended Class Action Complaint filed by Marilyn Hill, Gardith S. Lemy. (Attachments: # <u>1</u> Exhibit A - Statement of Diligent Effort)(Clark, James) (Entered: 01/17/2012)
01/17/2012	<u>47</u>	APPENDIX re <u>46</u> Response in opposition to motion, <u>45</u> Response in opposition to motion by Marilyn Hill, Gardith S. Lemy (filed separately). (Attachments: # <u>1</u> Appendix 1, # <u>2</u> Appendix 2, # <u>3</u> Appendix 3, # <u>4</u> Appendix 4)(Clark, James) (Entered: 01/17/2012)
01/20/2012	<u>48</u>	Unopposed MOTION for leave to file Reply Brief in Support of Motion for Remand by All Plaintiffs. (Clark, James) (Entered: 01/20/2012)
01/20/2012	<u>49</u>	NOTICE by Marilyn Hill, Gardith S. Lemy re <u>48</u> Unopposed MOTION for leave to file Reply Brief in Support of Motion for Remand <i>Amended Local Rule 3.01(g) Certificate as to Direct General Defendants Only</i> (Clark, James)

		(Entered: 01/20/2012)
01/23/2012	<u>50</u>	Unopposed MOTION for leave to file Reply to Plaintiffs' Response in Opposition to Motions to Dismiss by Certain Underwriters at Lloyds, London, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc.. (Remington, Bridget) (Entered: 01/23/2012)
01/25/2012	<u>51</u>	NOTICE by Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company re <u>18</u> MOTION to dismiss Plaintiffs' Third Amended Class Action Complaint of <i>Correction by Consent</i> (Vitale, John) (Entered: 01/25/2012)
01/30/2012	<u>52</u>	MOTION for leave to file a Reply to Plaintiffs' Response in Opposition to Motion to Dismiss or Stay by Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company. (Vitale, John) (Entered: 01/30/2012)
02/15/2012	<u>53</u>	NOTICE of supplemental authority re <u>46</u> Response in opposition to motion, <u>45</u> Response in opposition to motion by Marilyn Hill, Gardith S. Lemy (Clark, James) (Entered: 02/15/2012)
02/17/2012	<u>54</u>	Corporate Disclosure Statement by Nation Motor Club, Inc.. (Remington, Bridget) (Entered: 02/17/2012)
02/17/2012	<u>55</u>	Corporate Disclosure Statement by National Adjustment Bureau, Inc.. (Remington, Bridget) (Entered: 02/17/2012)
02/17/2012	<u>56</u>	Corporate Disclosure Statement by Lester Kalmanson Agency, Inc.. (Remington, Bridget) (Entered: 02/17/2012)
02/17/2012	<u>57</u>	Corporate Disclosure Statement by National Insurance Underwriters, Inc.. (Remington, Bridget) (Entered: 02/17/2012)
02/17/2012	<u>58</u>	CASE MANAGEMENT REPORT. (Clark, James) (Entered: 02/17/2012)
02/21/2012	<u>59</u>	Corporate Disclosure Statement by Direct General Finance Company Identifying Corporate Parent Direct General Corporation for Direct General Finance Company.. (Vitale, John) (Entered: 02/21/2012)
02/21/2012	<u>60</u>	Corporate Disclosure Statement by Direct General Insurance Agency Identifying Corporate Parent Direct General Corporation for Direct General Insurance Agency.. (Vitale, John) (Entered: 02/21/2012)
02/21/2012	<u>61</u>	Corporate Disclosure Statement by Direct General Insurance Company Identifying Corporate Parent Direct General Corporation for Direct General Insurance Company.. (Vitale, John) (Entered: 02/21/2012)
03/07/2012	<u>62</u>	Unopposed MOTION for extension of time to file document <i>Motion for Class Certification</i> by All Plaintiffs. (Clark, James) (Entered: 03/07/2012)
03/07/2012	<u>63</u>	ENDORSED ORDER granting <u>62</u> --motion to extend to <u>4/16/2012</u> the time within which to file a motion for class certification. Signed by Judge Steven D. Merryday on 3/7/2012. (BK) (Entered: 03/07/2012)

03/15/2012	<u>64</u>	ORDER denying <u>40</u> --motion to seal; denying <u>43</u> --motion to seal; granting <u>48</u> --motion for leave to file a reply; a reply of five or fewer pages is due by <u>3/26/2012</u> . Signed by Judge Steven D. Merryday on 3/15/2012. (BK) (Entered: 03/15/2012)
03/16/2012	<u>65</u>	CASE MANAGEMENT AND SCHEDULING ORDER: Joinder of Parties due by 6/12/2012, Discovery due by 10/19/2012, Dispositive motions due by 11/26/2012, Pretrial Conference set for 2/5/2013 at 11:00 AM in Tampa Courtroom 10 A before Magistrate Judge Anthony E. Porcelli, Jury Trial set for March 4, 2013, trial term in Tampa Courtroom 15 A before Judge Steven D. Merryday. Signed by Judge Steven D. Merryday on 3/16/2012. (TKD) (TKD). (Entered: 03/16/2012)
03/22/2012	<u>66</u>	ORDER REFERRING CASE to mediation before Peter J. Grilli. Lead counsel J. Daniel Clark to coordinate dates d file notice of mediation within 20 days . Mediation shall be conducted on or before September 19, 2012. Signed by Judge Steven D. Merryday on 3/22/2012. (TKD) (Entered: 03/22/2012)
03/23/2012	<u>67</u>	AFFIDAVIT OF Second Affidavit of Lisa M. Robinson by Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company re <u>42</u> Response in opposition to motion (<i>Attachments: # <u>1</u> Affidavit Second Affidavit of Lisa M. Robison</i>)(Vitale, John) Modified on 3/26/2012 (BSN). (Entered: 03/23/2012)
03/26/2012	<u>68</u>	STRICKEN. See Doc. <u>87</u> . COUNSEL NOTIFIED TO REFILE WITH CORRECT DOCUMENT. NOTICE by Marilyn Hill, Gardith S. Lemy re <u>23</u> MOTION to Remand to State Court <i>Exhibit 2 - Binding Authority Agreement</i> (Clark, James) Modified on 3/27/2012 (BSN). Modified on 4/30/2012 (BK) (Entered: 03/26/2012)
03/26/2012	<u>69</u>	REPLY to response to motion re <u>23</u> MOTION to Remand to State Court <i>PLAINITFFS' REPLY IN SUPPORT OF MOTION FOR REMAND</i> filed by Marilyn Hill, Gardith S. Lemy. (Clark, James) (Entered: 03/26/2012)
03/27/2012	<u>70</u>	STRICKEN. See Doc. <u>87</u> . COUNSEL NOTIFIED TO REFILE WITH EXHIBITS ATTACHED. MISSING EXHIBIT PAGES 1 THRU 29. NOTICE by Marilyn Hill, Gardith S. Lemy re <u>23</u> MOTION to Remand to State Court (<i>Attachments: # 1 Exhibit 2 - Binding Authority Agreement</i>) (Clark, James) Modified on 3/27/2012 (BSN). Modified on 4/30/2012 (BK) (Entered: 03/27/2012)
03/27/2012	<u>71</u>	MOTION for leave to file Surreply to Plaintiffs' Reply in Support of Motion to Remand by Certain Underwriters at Lloyds, London, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc.. (Remington, Bridget) (Entered: 03/27/2012)
03/28/2012	<u>72</u>	STRICKEN. See Doc. <u>87</u> . NOTICE by Marilyn Hill, Gardith S. Lemy re <u>23</u> MOTION to Remand to State Court <i>Notice of Filing Exhibit 2 to Motion for Remand</i> (<i>Attachments: # 1 Exhibit 2 - Binding Authority Agreement [Doc. 68]</i>)(Clark, James) Modified on 4/30/2012 (BK) (Entered: 03/28/2012)
03/29/2012	<u>73</u>	RESPONSE in opposition re <u>71</u> MOTION for leave to file Surreply to

		Plaintiffs' Reply in Support of Motion to Remand filed by Marilyn Hill, Gardith S. Lemy. (Clark, James) (Entered: 03/29/2012)
03/30/2012	<u>74</u>	MOTION for miscellaneous relief, specifically To Enforce Confidentiality Order and Strike From Record Docket Entries 68, 70 and 72 by Certain Underwriters at Lloyds, London, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C) (Remington, Bridget) (Entered: 03/30/2012)
04/11/2012	<u>75</u>	NOTICE of mediation conference/hearing to be held on September 13, 2012 at 9:30 am before Peter J. Grilli. (Clark, James) (Entered: 04/11/2012)
04/12/2012	<u>76</u>	MOTION to compel <i>Discovery Responses from Certain Underwriters</i> by Marilyn Hill, Gardith S. Lemy. (Attachments: # <u>1</u> Exhibit 1 - Requests for Production, # <u>2</u> Exhibit 2 - Responses and Objections, # <u>3</u> Exhibit 3 - Amended Responses, # <u>4</u> Exhibit 4 - Affidavit of C. Thomas Gallagher) (Clark, James) Motions referred to Magistrate Judge Anthony E. Porcelli. (Entered: 04/12/2012)
04/12/2012	<u>77</u>	MOTION to compel <i>Discovery Responses from the Kalmanson Defendants</i> by All Plaintiffs. (Attachments: # <u>1</u> Exhibit 1 - Request for Production, # <u>2</u> Exhibit 2 - Kalmanson Response & Objections, # <u>3</u> Exhibit 3 - Kalmanson Amd Responses)(Clark, James) Motions referred to Magistrate Judge Anthony E. Porcelli. (Entered: 04/12/2012)
04/12/2012	<u>78</u>	MOTION to compel <i>Discovery Responses from the Nation Safe Defendants</i> by All Plaintiffs. (Attachments: # <u>1</u> Exhibit 1 - RFP to NSD Defendants, # <u>2</u> Exhibit 2 - NSD Defendants' Response & Objections, # <u>3</u> Exhibit 3 - NSD Defendants' Amended Responses)(Clark, James) Motions referred to Magistrate Judge Anthony E. Porcelli. (Entered: 04/12/2012)
04/16/2012	<u>79</u>	Unopposed MOTION to extend time to April 23, 2012, Unopposed MOTION for extension of time to file document <i>Motion for Class Certification</i> by All Plaintiffs. (Clark, James) (Entered: 04/16/2012)
04/17/2012	80	ENDORSED ORDER granting <u>79</u> --motion to extend to <u>4/23/2012</u> the time within which to move for class certification. Signed by Judge Steven D. Merryday on 4/17/2012. (BK) (Entered: 04/17/2012)
04/18/2012	<u>81</u>	MEMORANDUM in opposition re <u>74</u> Motion for miscellaneous relief <i>Plaintiffs' Memorandum in Opposition to Motion to Enforce Confidentiality Order</i> filed by Marilyn Hill, Gardith S. Lemy. (Clark, James) (Entered: 04/18/2012)
04/23/2012	<u>82</u>	MOTION to stay Further Action Until After the Court has Rendered a Decision on Plaintiffs' Motion for Remand and the Defendants' Motions to Dismiss by Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Vitale, John) (Entered: 04/23/2012)
04/23/2012	<u>83</u>	MOTION to certify class by All Plaintiffs. (Attachments: # <u>1</u> Exhibit 1 -

		Gallagher Affidavit, # <u>2</u> Exhibit 2 - In Re Mitchel Kalmanson, # <u>3</u> Exhibit 3 - VPI Policy, # <u>4</u> Exhibit 4 - Kalmanson Depo excerpts, # <u>5</u> Exhibit 5 - Class Rep Declarations, # <u>6</u> Exhibit 6 - Attorney Declarations, # <u>7</u> Exhibit 7 - Trial Plan)(Clark, James) (Entered: 04/23/2012)
04/23/2012	<u>84</u>	**TERMINATED. COUNSEL NOTIFIED TO REFILE SELECTING ALL FORMS OF RELIEF REQUESTED IN MOTION.** Joint MOTION to supplement Motion for Class Certification With Expert Affidavit, To stay Deadline to Respond Pending the Filing of Same, and For Leave to File a Response in Excess of Twenty Pages by Marilyn Hill, Gardith S. Lemy. (Clark, James) Modified on 4/24/2012 (DMS). (Entered: 04/23/2012)
04/24/2012	<u>85</u>	NOTICE of Appearance by Christina K. Ramirez on behalf of Marilyn Hill, Gardith S. Lemy (Ramirez, Christina) (Entered: 04/24/2012)
04/24/2012	<u>86</u>	Joint MOTION to supplement <i>Motion for Class Certification with Expert Affidavit</i> , MOTION for extension of time to file document <i>Defendants Response to Motion for Class Certification</i> , MOTION for leave to file excess pages <i>Defendants' to File Response to Motion for Class Certification</i> by All Plaintiffs. (Clark, James) (Entered: 04/24/2012)
04/30/2012	<u>87</u>	ORDER granting <u>74</u> Motion to strike. The clerk is directed to remove documents 68 , 70 , and 72 .. Signed by Judge Steven D. Merryday on 4/30/2012. (TKD) (Entered: 04/30/2012)
04/30/2012	<u>88</u>	ORDER referring motion for report and recommendation: <u>83</u> --motion for class certification; referring motion for disposition: <u>86</u> --joint motion to supplement motion for class certification, to extend time to respond, and to exceed page limit. Signed by Judge Steven D. Merryday on 4/30/2012. (BK) Motions referred to <u>Magistrate Judge Anthony E. Porcelli</u> . (Entered: 04/30/2012)
04/30/2012	<u>89</u>	RESPONSE in opposition re <u>76</u> MOTION to compel <i>Discovery Responses from Certain Underwriters</i> filed by Certain Underwriters at Lloyds, London. (Attachments: # <u>1</u> Exhibit A)(McLean, Patricia) (Entered: 04/30/2012)
04/30/2012	<u>90</u>	RESPONSE in opposition re <u>77</u> MOTION to compel <i>Discovery Responses from the Kalmanson Defendants</i> filed by Mitchel Kalmanson, Lester Kalmanson Agency, Inc.. (Attachments: # <u>1</u> Exhibit A)(McLean, Patricia) (Entered: 04/30/2012)
04/30/2012	<u>91</u>	RESPONSE in opposition re <u>78</u> MOTION to compel <i>Discovery Responses from the Nation Safe Defendants</i> filed by NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc.. (McLean, Patricia) (Entered: 04/30/2012)
05/03/2012	<u>92</u>	ENDORSED ORDER granting <u>86</u> Motion to supplement; granting <u>86</u> Motion for extension of time to file; granting <u>86</u> Motion for Leave to File Excess Pages. Signed by Magistrate Judge Anthony E. Porcelli on 5/3/2012. (MH) (Entered: 05/03/2012)
05/07/2012	<u>93</u>	Unopposed MOTION for extension of time to file document <i>Expert's</i>

		<i>declaration and supplemental brief</i> by Marilyn Hill, Gardith S. Lemy. (Clark, James) (Entered: 05/07/2012)
05/10/2012	<u>94</u>	RESPONSE to motion re <u>82</u> MOTION to stay Further Action Until After the Court has Rendered a Decision on Plaintiffs' Motion for Remand and the Defendants' Motions to Dismiss filed by Marilyn Hill, Gardith S. Lemy. (Clark, James) (Entered: 05/10/2012)
05/10/2012	<u>95</u>	NOTICE by Certain Underwriters at Lloyds, London, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc. <i>of Intent to Withdraw as Attorney</i> (Remington, Bridget) (Entered: 05/10/2012)
05/14/2012	<u>96</u>	ORDER denying <u>23</u> --motion to remand; denying as moot <u>71</u> --motion for leave to file a sur-reply. Signed by Judge Steven D. Merryday on 5/14/2012. (BK) (Entered: 05/14/2012)
05/15/2012	<u>97</u>	ENDORSED ORDER granting <u>93</u> Motion for extension of time to file. Signed by Magistrate Judge Anthony E. Porcelli on 5/15/2012. (MH) (Entered: 05/15/2012)
05/17/2012	<u>98</u>	ORDER denying without prejudice <u>5</u> --motion to compel arbitration; denying without prejudice <u>6</u> --motion for attorney fees; denying <u>82</u> --motion to stay. Signed by Judge Steven D. Merryday on 5/17/2012. (BK) (Entered: 05/17/2012)
05/17/2012	<u>99</u>	**WITHDRAWN pursuant to <u>104</u> Notice. **Unopposed MOTION for extension of time to file document <i>Expert's declaration and supplemental brief</i> by Marilyn Hill, Gardith S. Lemy. (Clark, James) Modified on 5/30/2012 (DMS). (Entered: 05/17/2012)
05/17/2012	<u>100</u>	Joint MOTION for extension of time to file response/reply as to <u>83</u> MOTION to certify class (<i>UNOPPOSED</i>) by Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company. (Vitale, John) Motions referred to Magistrate Judge Anthony E. Porcelli. (Entered: 05/17/2012)
05/24/2012	<u>101</u>	NOTICE of Hearing on Motion <u>78</u> MOTION to compel <i>Discovery Responses from the Nation Safe Defendants</i> , <u>77</u> MOTION to compel <i>Discovery Responses from the Kalmanson Defendants</i> , <u>76</u> MOTION to compel <i>Discovery Responses from Certain Underwriters</i> : Motion Hearing set for 6/15/2012 at 10:00 AM in Tampa Courtroom 10 A before Magistrate Judge Anthony E. Porcelli. (MH) (Entered: 05/24/2012)
05/25/2012	<u>102</u>	NOTICE of Appearance by Sarah B. Van Schoyck on behalf of Certain Underwriters at Lloyds, London, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc. (Van Schoyck, Sarah) (Entered: 05/25/2012)
05/29/2012	<u>103</u>	ORDER granting <u>50</u> --motion by Nation Safe, Kalmanson, and the underwriters for leave to reply granting <u>52</u> --motion by Direct General for

		leave to reply; Direct General's reply due <u>6/8/2012</u> . Signed by Judge Steven D. Merryday on 5/29/2012. (BK) (Entered: 05/29/2012)
05/29/2012	<u>104</u>	NOTICE of withdrawal of motion by Marilyn Hill, Gardith S. Lemy re <u>99</u> Unopposed MOTION for extension of time to file document <i>Expert's declaration and supplemental brief</i> filed by Marilyn Hill, Gardith S. Lemy <i>Notice of Withdrawal of Motion for Extension</i> (Clark, James) (Entered: 05/29/2012)
05/29/2012	<u>105</u>	Emergency MOTION to compel by Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Exhibit, # <u>11</u> Exhibit, # <u>12</u> Exhibit, # <u>13</u> Exhibit, # <u>14</u> Exhibit)(Vitale, John) Motions referred to Magistrate Judge Anthony E. Porcelli. IMAGE FOR EXHIBIT 7 HAS BEEN REMOVED. COUNSEL TO REFILE LEGIBLE COPY. Modified on 6/14/2012 (CD). (Entered: 05/29/2012)
05/29/2012	<u>106</u>	MOTION to compel <i>the scheduling of depositions and for discovery management conference</i> by All Plaintiffs. (Attachments: # <u>1</u> Exhibit Composite Exhibit 1, # <u>2</u> Exhibit Composite Exhibit 2, # <u>3</u> Exhibit Exhibit 3, # <u>4</u> Exhibit Exhibit 4, # <u>5</u> Exhibit Composite Exhibit 5, # <u>6</u> Exhibit Exhibit 6, # <u>7</u> Exhibit Exhibit 7, # <u>8</u> Exhibit Exhibit 8, # <u>9</u> Exhibit Exhibit 9, # <u>10</u> Exhibit Exhibit 10, # <u>11</u> Exhibit Exhibit 11, # <u>12</u> Exhibit Exhibit 12, # <u>13</u> Exhibit Exhibit 13, # <u>14</u> Exhibit Exhibit 14, # <u>15</u> Exhibit Exhibit 15)(Clark, James) Motions referred to Magistrate Judge Anthony E. Porcelli. (Entered: 05/29/2012)
05/29/2012	<u>107</u>	REPLY to response to motion re <u>18</u> MOTION to dismiss Plaintiffs' Third Amended Class Action Complaint filed by Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company. (Vitale, John) (Entered: 05/29/2012)
05/29/2012	<u>108</u>	MOTION for miscellaneous relief, specifically motion for leave to exceed the ten-deposition limit by All Plaintiffs. (Attachments: # <u>1</u> Exhibit Exhibit 1, # <u>2</u> Exhibit Exhibit 2)(Clark, James) (Entered: 05/29/2012)
05/30/2012	<u>109</u>	NOTICE by Marilyn Hill, Gardith S. Lemy re <u>105</u> Emergency MOTION to compel <i>Notice of Direct General's Failure to Comply with Local Rule 3.01(g) Prior to Filing the Emergency Motion to Compel</i> (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(Clark, James) (Entered: 05/30/2012)
06/01/2012	<u>110</u>	REPLY to response to motion re <u>4</u> MOTION to dismiss Plaintiffs' Third Amended Class Action Complaint and Demand for Jury Trial, <u>21</u> MOTION to dismiss Plaintiffs' Third Amended Complaint, <u>22</u> MOTION to dismiss Plaintiffs' Third Amended Complaint, <u>20</u> MOTION to dismiss Plaintiffs' Third Amended Complaint filed by Certain Underwriters at Lloyds, London, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc.. (McLean, Patricia) (Entered: 06/01/2012)

06/01/2012	<u>111</u>	NOTICE of supplemental authority re <u>4</u> MOTION to dismiss Plaintiffs' Third Amended Class Action Complaint and Demand for Jury Trial by Certain Underwriters at Lloyds, London, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc. (Attachments: # <u>1</u> Exhibit A)(McLean, Patricia) (Entered: 06/01/2012)
06/01/2012	<u>112</u>	NOTICE by Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company re <u>105</u> Emergency MOTION to compel, <u>109</u> Notice (Other)Notice (Other) <i>Joint Notice of (1) Resolution of the Emergency Nature of the Direct Defendants' Emergency Motion to Compel [DN 105] and (2) Withdrawal of Plaintiffs' Notice of Direct General's Failure to Comply with Local Rule 3.01(g) Prior to Filing the Emergency Motion to Compel [DN 109]</i> (Vitale, John) (Entered: 06/01/2012)
06/01/2012	<u>113</u>	SUPPLEMENT re <u>105</u> Emergency MOTION to compel <i>Pursuant to Local Rule 3.01(g)</i> by Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company. (Vitale, John) (Entered: 06/01/2012)
06/07/2012	<u>114</u>	NOTICE to the Courts to take judicial notice regarding <u>21</u> MOTION to dismiss Plaintiffs' Third Amended Complaint, <u>22</u> MOTION to dismiss Plaintiffs' Third Amended Complaint, <u>20</u> MOTION to dismiss Plaintiffs' Third Amended Complaint, <u>18</u> MOTION to dismiss Plaintiffs' Third Amended Class Action Complaint by Marilyn Hill, Gardith S. Lemy. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3)(Clark, James) (Entered: 06/07/2012)
06/08/2012	<u>115</u>	NOTICE by Marilyn Hill, Gardith S. Lemy re <u>83</u> MOTION to certify class <i>Notice of Filing Exhibit A to Affidavit of C. Thomas Gallagher in Support of Plaintiffs' Motion for Class Certification</i> (Attachments: # <u>1</u> Exhibit Gallagher Curriculum Vitae)(Clark, James) (Entered: 06/08/2012)
06/11/2012	<u>116</u>	MOTION for protective order <i>With Incorporated Memorandum of Law</i> by Certain Underwriters at Lloyds, London, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc.. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5-A, # <u>6</u> Exhibit 5-B, # <u>7</u> Exhibit 5-C, # <u>8</u> Exhibit 5-D, # <u>9</u> Exhibit 5-E, # <u>10</u> Exhibit 6-A, # <u>11</u> Exhibit 6-B, # <u>12</u> Exhibit 6-C, # <u>13</u> Exhibit 6-D, # <u>14</u> Exhibit 6-E, # <u>15</u> Exhibit 7, # <u>16</u> Exhibit 8, # <u>17</u> Exhibit 9) (McLean, Patricia) Motions referred to Magistrate Judge Anthony E. Porcelli. (Entered: 06/11/2012)
06/11/2012	<u>117</u>	NOTICE of withdrawal of motion by Marilyn Hill, Gardith S. Lemy <i>Plaintiffs Notice Of Withdrawal Of Motion To Compel The Scheduling Of Depositions Only As To Direct General</i> (Crist, Matthew) (Entered: 06/11/2012)
06/12/2012	<u>118</u>	RESPONSE re <u>114</u> Notice to the Courts to take judicial notice <i>In Opposition to Request</i> by Certain Underwriters at Lloyds, London, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National

		Insurance Underwriters, Inc.. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2) (McLean, Patricia) (Entered: 06/12/2012)
06/12/2012	<u>119</u>	MOTION for Bridget E. Remington to withdraw as attorney by Certain Underwriters at Lloyds, London, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc.. (Remington, Bridget) (Entered: 06/12/2012)
06/14/2012	<u>120</u>	NOTICE by Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company re <u>105</u> Emergency MOTION to compel <i>of Filing Corrected Exhibits 7 and 10 to The Direct Defendants' Motion to Compel</i> (Attachments: # <u>1</u> Exhibit 7 to The Direct Defendants' Motion to Compel, # <u>2</u> Exhibit 10 to The Direct Defendants' Motion to Compel)(Vitale, John) (Entered: 06/14/2012)
06/14/2012	<u>121</u>	RESPONSE in opposition re <u>108</u> MOTION for miscellaneous relief, specifically motion for leave to exceed the ten-deposition limit <i>Direct General Defendants' Opposition to Plaintiffs' Motion for Leave to Exceed the Ten-Deposition Limit</i> filed by Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7)(Vitale, John) (Entered: 06/14/2012)
06/15/2012	<u>122</u>	NOTICE by Marilyn Hill, Gardith S. Lemy <i>OF DISMISSAL OF COUNT I AS TO CERTAIN UNDERWRITERS</i> (Clark, James) (Entered: 06/15/2012)
06/15/2012	<u>123</u>	RESPONSE in opposition re <u>105</u> Emergency MOTION to compel filed by Marilyn Hill, Gardith S. Lemy. (Attachments: # <u>1</u> Exhibit Composite Exhibit 1)(Clark, James) (Entered: 06/15/2012)
06/15/2012	<u>126</u>	Minute Entry. Proceedings held before Magistrate Judge Anthony E. Porcelli: Motion Hearing held on 6/15/2012 re <u>77</u> MOTION to compel <i>Discovery Responses from the Kalmanson Defendants</i> filed by Marilyn Hill, Gardith S. Lemy, <u>76</u> MOTION to compel <i>Discovery Responses from Certain Underwriters</i> filed by Marilyn Hill, Gardith S. Lemy, <u>78</u> MOTION to compel <i>Discovery Responses from the Nation Safe Defendants</i> filed by Marilyn Hill, Gardith S. Lemy, <u>100</u> Joint MOTION for extension of time to file response/reply as to <u>83</u> MOTION to certify class (<i>UNOPPOSED</i>) Joint MOTION for extension of time to file response/reply as to <u>83</u> MOTION to certify class (<i>UNOPPOSED</i>) filed by Direct General Insurance Agency, Direct General Finance Company, Direct General Insurance Company. (digital) (LV) (Entered: 06/20/2012)
06/19/2012	<u>124</u>	RESPONSE re <u>114</u> Notice to the Courts to take judicial notice <i>Opposition To Plaintiffs Request For Court To Take Judicial Notice of Public Records</i> filed by Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company. (Attachments: # <u>1</u> Exhibit 1)(Vitale, John) (Entered: 06/19/2012)
06/19/2012	<u>125</u>	ORDER granting <u>4</u> , <u>18</u> , <u>20</u> , <u>21</u> , and <u>22</u> --motions to dismiss; dismissing action with prejudice; directing the Clerk to TERMINATE each pending motion and CLOSE the case. Signed by Judge Steven D. Merryday on

		6/19/2012. (BK) (Entered: 06/19/2012)
06/29/2012	<u>127</u>	**TERMINATED AT COUNSEL'S REQUEST. COUNSEL TO FILE CORRECTED MOTION.** MOTION for Bill of Costs by Certain Underwriters at Lloyds, London, Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc.. (Attachments: # <u>1</u> Exhibit "A", # <u>2</u> Exhibit "B")(Van Schoyck, Sarah) Motions referred to Magistrate Judge Anthony E. Porcelli. Modified on 6/29/2012 (DMS). (Entered: 06/29/2012)
06/29/2012	<u>128</u>	MOTION for Bill of Costs by Certain Underwriters at Lloyds, London, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc.. (Attachments: # <u>1</u> Exhibit "A", # <u>2</u> Exhibit "B")(Van Schoyck, Sarah) Motions referred to Magistrate Judge Anthony E. Porcelli. (Entered: 06/29/2012)
07/10/2012	<u>129</u>	OBJECTION re <u>128</u> MOTION for Bill of Costs <i>Plaintiffs' Objection to Defendants' Bills of Costs</i> . (Clark, James) (Entered: 07/10/2012)
07/16/2012	<u>130</u>	MOTION for reconsideration re <u>125</u> Order on motion to dismiss by Marilyn Hill, Gardith S. Lemy. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4)(Clark, James) Modified on 7/17/2012 (CD). (Entered: 07/16/2012)
07/24/2012	<u>131</u>	RESPONSE in opposition re <u>128</u> MOTION for Bill of Costs <i>Defendants' Response in Opposition to Plaintiffs' Objection to Defendants' Bills of Costs</i> filed by Certain Underwriters at Lloyds, London, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc.. (McLean, Patricia) (Entered: 07/24/2012)
07/27/2012	<u>132</u>	Unopposed MOTION for extension of time to file response/reply as to <u>130</u> MOTION for reconsideration re <u>125</u> Order on motion to dismissOrder on motion to compelOrder on motion to certify classOrder on motion for extension of time to file response/replyOrder on Motion for Miscellaneous ReliefOrder on motion for protective o by Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company. (Vitale, John) Motions referred to Magistrate Judge Anthony E. Porcelli. (Entered: 07/27/2012)
07/27/2012	133	ENDORSED ORDER granting <u>132</u> the Direct defendants motion for extension through August 9, 2012, of the time within which to file a response to the plaintiffs' motion for reconsideration. Signed by Judge Steven D. Merryday on 7/27/2012. (Entered: 07/27/2012)
07/30/2012	<u>134</u>	MEMORANDUM in opposition re <u>130</u> Motion for reconsideration filed by Certain Underwriters at Lloyds, London, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc.. (Attachments: # <u>1</u> Exhibit 1)(McLean, Patricia) (Entered: 07/30/2012)

		07/30/2012)
08/09/2012	<u>135</u>	RESPONSE in opposition re <u>130</u> MOTION for reconsideration re <u>125</u> Order on motion to dismissOrder on motion to compelOrder on motion to certify classOrder on motion for extension of time to file response/replyOrder on Motion for Miscellaneous ReliefOrder on motion for protective o <i>to Plaintiffs Motion for Reconsideration of Order of Dismissal and Leave to File Amended Complaint</i> filed by Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company. (Attachments: # <u>1</u> Exhibit A to Direct Defendants' Opposition to Plaintiffs' Motion for Reconsideration)(Vitale, John) (Entered: 08/09/2012)
08/14/2012	<u>136</u>	ORDER denying <u>130</u> --motion for reconsideration. Signed by Judge Steven D. Merryday on 8/14/2012. (BK) (Entered: 08/14/2012)
09/13/2012	<u>137</u>	NOTICE OF APPEAL as to <u>136</u> Order on motion for reconsideration, <u>125</u> Order on motion to dismissOrder on motion to compelOrder on motion to certify classOrder on motion for extension of time to file response/replyOrder on Motion for Miscellaneous ReliefOrder on motion for protective orderOrder on motion to withdraw as attorney by Marilyn Hill, Gardith S. Lemy. (Filing fee not paid) (Clark, James) (Entered: 09/13/2012)
09/14/2012		TRANSMITTAL of initial appeal package to USCA consisting of copies of notice of appeal, docket sheet, order/judgment being appealed, and motion, if applicable, to USCA re <u>137</u> Notice of appeal. Eleventh Circuit Transcript information form forwarded to pro se litigants and available to counsel at www.flmd.uscourts.gov under Forms and Publications/General. (DMS) (Entered: 09/14/2012)
09/17/2012		USCA appeal fees received \$455 receipt number TPA13290 re <u>137</u> Notice of appeal filed by Marilyn Hill, Gardith S. Lemy (AG) (Entered: 09/17/2012)
09/18/2012		TRANSMITTAL to USCA forwarding appeal fees received \$455 receipt number TPA13290 re <u>137</u> Notice of appeal. (EJC) (Entered: 09/18/2012)
09/27/2012	<u>138</u>	TRANSCRIPT information form filed by Marilyn Hill, Gardith S. Lemy re <u>137</u> Notice of appeal. (Clark, James) (Entered: 09/27/2012)
09/28/2012	<u>139</u>	ORDER granting <u>119</u> --Bridget E. Remington's motion to withdraw as counsel for Certain Underwriters at Lloyds, London, National Insurance Underwriters, Inc., National Adjustment Bureau, Inc., Nation Motor Club, Inc., Nation Safe Drivers, LLC, NSD Group, LLC, Lester Kalmanson Agency, Inc., and Mitchell Kalmanson. Signed by Judge Steven D. Merryday on 9/28/2012. (BK) (Entered: 09/28/2012)
09/28/2012		Set/reset deadlines re <u>137</u> Notice of appeal : Certificate of readiness due by 10/11/2012. (DMS) (Entered: 09/28/2012)
10/01/2012		ACKNOWLEDGMENT by USCA of receiving initial appeal package on 9/18/2012 re <u>137</u> Notice of appeal. USCA number: 12-14794-F. (DMS) (Entered: 10/01/2012)
10/11/2012	<u>140</u>	ORDER referring to <u>Magistrate Judge Porcelli</u> for a report and recommendation: <u>128</u> --motion for Bill of Costs and objections. Signed by

		Judge Steven D. Merryday on 10/11/2012. (BK) (Entered: 10/11/2012)
10/22/2012	<u>141</u>	CERTIFICATE of readiness sent to USCA re <u>137</u> Notice of appeal. ROA consists of: volume of pleadings: 11. USCA number: 12-14794-F. (DMS) (Entered: 10/22/2012)
01/09/2013	<u>142</u>	REPORT AND RECOMMENDATION re <u>128</u> MOTION for Bill of Costs filed by Lester Kalmanson Agency, Inc., National Adjustment Bureau, Inc., Nation Motor Club, Inc., Mitchel Kalmanson, Nation Safe Drivers, LLC, Certain Underwriters at Lloyds, London, National Insurance Underwriters, Inc., NSD Group, LLC. Signed by Magistrate Judge Anthony E. Porcelli on 1/9/2013. (SLS) (Entered: 01/09/2013)
01/09/2013	<u>143</u>	ORDER of USCA: Motion to withdraw as counsel filed by John Benjamin Vitale is GRANTED as to <u>137</u> Notice of appeal filed by Marilyn Hill, Gardith S. Lemy. EOD: 1/9/13; USCA number: 12-14794-FF. (JNB) (Entered: 01/09/2013)
01/23/2013	<u>144</u>	OBJECTION re <u>142</u> REPORT AND RECOMMENDATION re <u>128</u> MOTION for Bill of Costs filed by Lester Kalmanson Agency, Inc., National Adjustment Bureau, Inc., Nation Motor Club, Inc., Mitchel Kalmanson, Nation Safe Drivers, LLC, Certain Underwriters at Lloyds, London, National . (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4)(Crist, Matthew) Modified on 1/24/2013, NOTE: DOCUMENT TERMINATED, counsel notified to refile using correct log in and signature (EJC). (Entered: 01/23/2013)
01/24/2013	<u>145</u>	OBJECTION re <u>142</u> REPORT AND RECOMMENDATION re <u>128</u> MOTION for Bill of Costs filed by Lester Kalmanson Agency, Inc., National Adjustment Bureau, Inc., Nation Motor Club, Inc., Mitchel Kalmanson, Nation Safe Drivers, LLC, Certain Underwriters at Lloyds, London, National . (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4)(Clark, James) (Entered: 01/24/2013)
01/24/2013	<u>146</u>	ORDER remanding to Magistrate Judge Anthony E. Porcelli for further consideration in light of plaintiffs' objection (Doc. 144): <u>142</u> --REPORT AND RECOMMENDATION re <u>128</u> --motion for bill of costs. Signed by Judge Steven D. Merryday on 1/24/2013. (BK) (Entered: 01/24/2013)
01/25/2013	<u>147</u>	NOTICE of hearing: Hearing on the Objection <u>145</u> related to the Bill of Costs Report & Recommendation <u>142</u> is set for 2/6/2013 at 02:00 PM in Tampa Courtroom 10A before Magistrate Judge Anthony E. Porcelli. The parties may appear telephonically for the hearing by calling the toll-free number at 1-888-684-8852 on the day of the hearing and entering access code 8895301 followed by the security code 0206. If a party wishes to appear telephonically, the party must contact Chambers at 813-301-5540 at least twenty-four hours prior to the hearing to notify Chambers that the party will do so.(SLS) (Entered: 01/25/2013)
02/05/2013	<u>148</u>	RESPONSE to objections to <u>142</u> Report and Recommendations <i>Regarding Defendants' Bills of Costs</i> filed by Certain Underwriters at Lloyds, London, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment

		Bureau, Inc., National Insurance Underwriters, Inc.. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Van Schoyck, Sarah) (Entered: 02/05/2013)
02/06/2013	<u>149</u>	Minute Entry. Proceedings held before Magistrate Judge Anthony E. Porcelli: MISCELLANEOUS HEARING held on 2/6/2013. (digital) (LV) (Entered: 02/06/2013)
02/13/2013	<u>150</u>	MOTION for Extension of Time to File Response/Reply as to <u>142</u> REPORT AND RECOMMENDATION re <u>128</u> MOTION for Bill of Costs filed by Lester Kalmanson Agency, Inc., National Adjustment Bureau, Inc., Nation Motor Club, Inc., Mitchel Kalmanson, Nation Safe Drivers, LLC, Certain Underwriters at Lloyds, London, National by Certain Underwriters at Lloyds, London, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc.. (Van Schoyck, Sarah) Motions referred to Magistrate Judge Anthony E. Porcelli. (Entered: 02/13/2013)
02/14/2013	<u>151</u>	ENDORSED ORDER granting <u>150</u> Defendants' Unopposed Motion for Extension of Time to Supplement Response/Reply re <u>142</u> REPORT AND RECOMMENDATION re <u>128</u> MOTION for Bill of Costs. Supplemental Response is due on or before February 15, 2013. Signed by Magistrate Judge Anthony E. Porcelli on 2/14/2013. (SLS) (Entered: 02/14/2013)
02/14/2013		RECORD on appeal sent to USCA re <u>137</u> Notice of appeal. Transmittal includes copy of docket sheet, volume of pleadings: 11. USCA number 12-14794-FF. (DMS) (Entered: 02/14/2013)
02/15/2013	<u>152</u>	NOTICE by Certain Underwriters at Lloyds, London, Mitchel Kalmanson, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc. re <u>145</u> <i>Objection Regarding Plaintiffs' Objection to Report and Recommendation Regarding Defendants' Bill of Costs</i> (Van Schoyck, Sarah) (Entered: 02/15/2013)
02/21/2013	<u>153</u>	REPORT AND RECOMMENDATIONS re <u>142</u> REPORT AND RECOMMENDATION re <u>128</u> MOTION for Bill of Costs filed by Lester Kalmanson Agency, Inc., National Adjustment Bureau, Inc., Nation Motor Club, Inc., Mitchel Kalmanson, Nation Safe Drivers, LLC, Certain Underwriters at Lloyds, London, National, <u>128</u> MOTION for Bill of Costs filed by Lester Kalmanson Agency, Inc., National Adjustment Bureau, Inc., Nation Motor Club, Inc., Mitchel Kalmanson, Nation Safe Drivers, LLC, Certain Underwriters at Lloyds, London, National Insurance Underwriters, Inc., NSD Group, LLC. Signed by Magistrate Judge Anthony E. Porcelli on 2/21/2013. (SLS) (Entered: 02/21/2013)
02/28/2013		ACKNOWLEDGMENT by USCA of receiving record on appeal on 2/19/2013 re <u>137</u> Notice of appeal. USCA number: 12-14794-FF. (DMS) (Entered: 03/01/2013)
03/08/2013	<u>154</u>	ORDER adopting <u>153</u> --REPORT AND RECOMMENDATIONS; granting <u>128</u> --motion for costs, to the extent that the Clerk is directed to ENTER JUDGMENT for taxable costs in favor of the defendants and against the

		plaintiffs in the amount of \$2,500.75. The motion is otherwise denied. Signed by Judge Steven D. Merryday on 3/8/2013. (BK) (Entered: 03/08/2013)
03/11/2013	<u>155</u>	JUDGMENT in favor of Certain Underwriters at Lloyds, London, Direct General Finance Company, Direct General Insurance Agency, Direct General Insurance Company, Lester Kalmanson Agency, Inc., NSD Group, LLC, Nation Motor Club, Inc., Nation Safe Drivers, LLC, National Adjustment Bureau, Inc., National Insurance Underwriters, Inc., Mitchel Kalmanson against Gardith S. Lemy, Marilyn Hill. (Signed by Deputy Clerk) (DMS) (Entered: 03/11/2013)
03/12/2014	<u>156</u>	OPINION/ORDER of USCA. AFFIRMED as to <u>137</u> Notice of appeal filed by Marilyn Hill, Gardith S. Lemy. EOD: 3/10/14; Mandate to issue at a later date. USCA number: 12-14794-FF. (JNB) (Entered: 03/12/2014)

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**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

GARDITH S. LEMY and MARILYN HILL,
individually, and on behalf of all
those similarly situated,

Plaintiffs,

v.

Case No.: 8:11-cv-2722-T-23AEP

DIRECT GENERAL FINANCE COMPANY,
DIRECT GENERAL INSURANCE
COMPANY, DIRECT GENERAL
INSURANCE AGENCY, CERTAIN
UNDERWRITERS AT LLOYDS, LONDON,
NATIONAL INSURANCE
UNDERWRITERS, INC., NATIONAL
ADJUSTMENT BUREAU, INC., NATION
MOTOR CLUB, INC., NATION SAFE
DRIVERS, LLC, NSD GROUP, LLC,
LESTER KALMANSON AGENCY, INC.,
and MITCHEL KALMANSON,

Defendants.

**PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION AND SUPPORTING MEMORANDUM OF LAW**

Plaintiffs, individually and on behalf of all those similarly situated, pursuant to Local Rule 4.04, move for an order certifying this case as a state-wide class action of Florida citizens under Fed. R. Civ. P. 23(b)(2) and (b)(3) against Defendants based on their violations of the Florida Insurance Code and applicable Florida law, as alleged in the Third Amended Class Action Complaint and Demand For Jury Trial (Doc. 2; the “Complaint”).

The proposed Class and Subclass are defined as follows:

Class: All similarly situated Florida citizens who purchased Vehicle Protection Insurance from Defendants on or after December 2, 2004.¹
Subclass: All class members who financed Vehicle Protection Insurance from any Defendants.

Plaintiffs also seek an order appointing two co-lead class counsel under Rule 23(g), appointing Plaintiffs as Class Representatives, and directing reasonable and adequate notice be provided to Class Members at Defendants’ expense pursuant to Rule 23(c).

I. PRELIMINARY STATEMENT

“When common questions represent a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is a clear justification for handling the dispute on a representative rather than on an individual basis.” 7AA *Fed. Prac. & Proc. Civ.* § 1778 (3d ed.). This case is such a case. Class certification is proper and necessary.

This case centers around a decades-old scheme developed and implemented between the Direct General, Nations Safe, and Kalmanson Defendants to market and sell essentially worthless, unconscionably high profit margin ancillary (add-on) insurance products to people who were purchasing minimum financial responsibility personal injury protection and property damage coverage as required by Florida law – so they could legally drive their cars on Florida roadways. The ancillary product in this scam is called Vehicle Protection Insurance (“VPI”).

¹ The Class does not include any person that has made a claim under the VPI policies.

In order to effectively perpetrate this scam, Defendants sought a well-respected insurance market, Lloyd's of London, and used Certain Underwriters, who are part of the market, as a "front" for their scam. It was through the use of the Lloyd's "front," which is *allegedly* an eligible surplus lines insurer in Florida, that has allowed VPI to go essentially unregulated for years, and is why it has escaped consumer protection provided through Florida's form and rate regulation. *See* Affidavit of Florida's former Insurance Commissioner, C. Thomas Gallagher, in support of class certification, attached as **Exhibit 1** (the "Gallagher Affidavit").

Plaintiffs move for certification of their claims against all Defendants for common law restitution (Count III) and for declaratory relief (Count II), as well as claims for statutory violations of § 627.8405, Florida Statutes, against the Direct General Defendants and Certain Underwriters (Count I). Plaintiffs also seek certification of their claims for breach of contract (Count IV), breach of implied covenant of good faith and fair dealing (Count V), and unjust enrichment (Count VI) against Certain Underwriters, and their claims for unjust enrichment against the Direct General Defendants (Count VII), the Nation Safe Defendants (VIII), and Mr. Kalmanson (IX) and the Kalmanson Agency (X). Because all required elements of Rule 23(a), (b)(2), and (b)(3) are satisfied, the Court should certify the proposed Class.

As Plaintiffs demonstrate below, Rule 23(a)(1)'s numerosity is easily satisfied because the Class is undisputedly comprised of hundreds of thousands of Florida citizens that purchased VPI insurance since the beginning of the class period, December 2, 2004. *See infra*, § III.B1. at 13-14.

Rule 23(a)(2)'s commonality requirement is also easily satisfied. There are many common questions of fact arising from the form VPI contract issued to each Class member, and Defendants' pattern and practice with respect to the creation, marketing, and sale of VPI: each

Class member was issued a form VPI contract that contains the same terms; each VPI policy was sold in accordance with binding authority agreements between Certain Underwriters and Lester Kalmanson Agency, Inc.; all VPI policies were sold by producing agents employed by Direct General Insurance Agency, Inc. through agreements between it and the Nation Safe Defendants; and Defendants have a common class-wide pattern and practice of conducting, documenting, and verifying their “diligent efforts,” which violates Florida’s Surplus Lines Law.

These facts, which are common to each Class member, will be used to determine several common questions of law: whether VPI is procurable in the admitted insurance market; whether Defendants’ pattern and practice used to satisfy the “diligent effort” requirements comply with the requirements of § 626.916(1)(a) (Plaintiffs’ expert has opined and the Department of Financial Services (“DFS”) has proven by “clear and convincing” evidence² that Defendants failed to satisfy the statutory requirements); whether the VPI policy itself contains language required by § 626.924 (Plaintiffs’ expert has opined that it does not); whether Certain Underwriters are eligible surplus lines insurers under Florida law; whether VPI is exempt from Chapter 627, Florida Statutes; whether Defendants must properly submit VPI for form and rate approval with the Office of Insurance Regulation (the “OIR”); whether Defendants’ violations of Florida law render VPI illegal, requiring restitution; whether VPI is an automobile club membership under the law; whether parts of VPI are unregulated under the Florida Insurance Code; and whether financing VPI is prohibited under Florida law. *See infra*, § III.B.2. at 14-16; Gallagher Affidavit, ¶ 7.

² On March 31, 2009, the DFS filed an administrative complaint against Mr. Kalmanson asserting that he failed to comply with his “diligent effort” requirements under § 626.916(1)(a), Florida Statutes. DFS utilized a compliance review process in which the auditor reviewed 80 policies where Mr. Kalmanson was the surplus lines agent, 79 of which were sold through the same binding authority agreements with Certain Underwriters, and almost all of them were sold through the Direct General Defendants. After a hearing in which Mr. Kalmanson provided testimony on his “diligent efforts,” DFS established by “clear and convincing evidence” that neither the producing agents (Direct General) nor Mr. Kalmanson complied with the diligent effort requirements in § 626.916(1)(a). *See Composite Exhibit 2*; *see also infra* note 8 regarding DFS investigations versus OIR review.

Rule 23(a)(3)'s typicality requirement is also satisfied. Plaintiffs' claims are typical of the claims of all Class members because each Plaintiff and member of the Class, were all issued the same form insurance policy, were subjected to Defendants' *pattern and practice* of not conducting, documenting, and verifying their required "diligent efforts," were sold a policy that was not eligible for export under the Florida Surplus Lines Law, were sold a policy that should have been – but was not – filed for approval with the Florida Office of Insurance Regulation, and were sold an insurance policy that was unconscionable, illusory, and essentially worthless. Moreover, the members of the Subclass all financed their VPI policies, which could not be financed in accordance with Florida law. Each Class and Subclass member will seek the same relief under the same legal theories based on this common evidence. In short, Plaintiffs, the Class, and the Subclass all seek redress via the same legal claims, which all arise out of the same set of common facts, satisfying the typicality requirement. *See infra*, § III.B.3. at 16-18.

The final Rule 23(a) requirement – adequacy of representation – is fulfilled because Plaintiffs do not have interests that conflict with the Class, and they are represented by well-qualified counsel who are diligently prosecuting these claims on behalf of the Class. *See infra*, § III.B.4. at 18-19. Each Plaintiff, like each Class and Subclass member, has a strong interest in proving the unlawfulness of Defendants' scheme and obtaining redress. The interests of Plaintiffs and the Class are thus co-extensive. *Id.*

Having satisfied the requirements of Rule 23(a), Plaintiffs are entitled to certification under Rule 23(b)(3). Common issues predominate because the salient legal and factual questions in this case will be resolved with proof common to all Plaintiffs and Class members. *See infra*, § III.C.2. at 19-22.

Plaintiffs will establish predominance with, among other things, evidence that the VPI policies were sold to all Class members containing substantially similar (if not identical) terms; that for purposes of liability, Defendants systematically sold VPI in the same manner and by the same means to all Class members through a sales process that objectively violates the Florida Surplus Lines Law, making VPI ineligible for export; that VPI is procurable in the admitted insurance market and, therefore, is not eligible for export under the Florida Surplus Lines Law; that Defendants sold this product in the surplus lines market to avoid consumer protection by way of rate and form regulation, and, in fact, did not file any of its forms or rates for approval with the OIR; and that financing VPI was prohibited because the form VPI policy was not permitted to be financed under Florida law. All of this evidence, and more, will have a direct impact on each Class member's effort to establish liability and on each Class member's entitlement to relief. Common issues thus predominate.

Predominance of common questions is also highlighted by the nature of the proof required to ascertain members of the Class and calculate their individual damages. Using Defendants' data, and without the need for any input from individual Class members, Plaintiffs will identify the exact amount that each class member paid for VPI, the amount overcharged for VPI, and how much was paid to finance VPI.³

Turning to the superiority prong of Rule 23(b)(3), nearly all Class members have claims that are too small to litigate on an individual basis. Unless the proposed Class is certified, the courthouse doors will be closed to almost all of these consumers, and Defendants will retain the ill-gotten gains of their unlawful conduct. Further, adjudicating claims in a single proceeding before this Court is much more efficient than a multiplicity of suits here and elsewhere that

³ Plaintiffs contemporaneously file their Motion for Leave to Supplement Motion for Class Certification in which they request an opportunity to file the affidavit of Birny Birnbaum, Plaintiffs' expert on class certification, including liability and damages calculations.

would unduly burden our judicial system. As their proposed Trial Plan demonstrates, Plaintiffs do not foresee any significant manageability problems. A class action is a superior method of adjudicating Plaintiffs' claims. *See infra*, § III.C.2. at 22-25.

II. FACTUAL BACKGROUND AND APPLICABLE FLORIDA LAW

Although much of the background, facts, and applicable Florida law have been previously outlined to the Court in pending motions, certain aspects are worth repeating.⁴

A. The Creation, Marketing, and Sale of VPI

VPI is a standardized form contract that was sold (and, for most customers, financed) in conjunction with the purchase of standard automobile no-fault and property damage (PIP/PD) insurance coverage required under Florida law. *See* Complaint, ¶¶ 2, 24, 31-34, 47-48; Doc. 18-2 (Hill VPI policy); Doc. 18-6 (Hill Premium Finance Agreement); Doc. 18-4 (Lemy VPI Policy); Doc. 18-7 (Lemy Premium Finance Agreement); Gallagher Affidavit; Kalmanson Deposition, (Doc. 23-1); sample VPI policy attached as **Exhibit 3**. Evidence also establishes that VPI was marketed, sold, and issued to thousands of Florida citizens just like Plaintiffs. *See* Direct General Defendants' Affidavit, (Doc. 3), at ¶ 10 (in 2007 and 2008, Direct General Insurance Agency, Inc. collected over \$26 million in Florida premiums for VPI; at \$170 per policy, there were at least 140,000 policies issued during just that two year period).⁵

Mitchell Kalmanson, a licensed Florida Surplus Lines agent, and the owner and operator of Lester Kalmanson Agency, Inc. ("the Kalmanson Agency"), created the language for VPI,

⁴ *See* Plaintiffs' Response to Motions to Dismiss, (Doc. 45), discussing "General Provisions of the Florida Insurance Code," § A, at 2-3; "The Florida Surplus Lines Law," § B, at 3-4; OIR and consumer protections under Chapter 627 of the Florida Statutes, § C, at 4-5; Plaintiffs' Response to Direct General Defendants' Motions To Dismiss, (Doc. 46), discussing statutory violations under §§ 627.835 and 627.8405, § II, at 6-9; Motion For Remand, (Doc. 23), discussing Defendants' relationships, the Binding Authority Agreement, commission structure, risk obligations, and escrow arrangement, § B, at 6-10; Plaintiffs' Reply In Support of Motion For Remand, (Doc. 69), discussing commissions, claims handling, and escrow funds.

⁵ During discovery, Defendants also produced its premium bordereaux showing the thousands of VPI policies sold (in response to state court orders compelling discovery, Doc. 9-14 at ¶ 8).

which was sold to Florida consumers purportedly under the Florida Surplus Lines Law. Complaint at ¶ 28; Kalmanson Deposition at 26-27 (excerpts from the Kalmanson Deposition are attached as **Exhibit 4**). VPI provides coverage for medical expenses (including ambulance), hospital stay, rental car reimbursement, towing, legal fees, and bail bonds all arising out of the use of an automobile (mostly when these charges are a result of a collision). *See* Docs. 18-2 (Hill VPI policy) and 18-4 (Lemy VPI Policy).

The underwriting of VPI is established through a series of binding authority agreements between the Kalmanson Agency and Certain Underwriters at Lloyd's, London ("Certain Underwriters") that allowed the Kalmanson Agency to sell VPI to the general public with the Kalmanson Agency, and specifically Mitchel Kalmanson, acting as the Florida surplus lines agent. These binding authority agreements also permitted National Insurance Underwriters, Inc., National Adjustment Bureau, Inc., Nation Motor Club, Inc., Nation Safe Drivers, LLC, and NSD Group, LLC (collectively, the "Nation Safe Defendants") to sell VPI to the general public. Complaint, ¶¶ 13-16, 25-26, 28, 30; Doc. 72-1. Importantly, the binding authority agreements also required that the Nation Safe Defendants put \$1 per month per policy into an escrow account to pay any claims submitted under VPI, and if that account was ever drawn too low, the Nation Safe Defendants were responsible to replenish the account. Finally, there are hold harmless and indemnification clauses in the binding authority agreements that virtually guarantee that Certain Underwriters has absolutely no risk in the sale and use of VPI. *See* Binding Authority Agreement, (Doc. 72-1); Gallagher Affidavit, ¶ 7(F).

Plaintiffs assert that since all risk to Certain Underwriters has essentially been eliminated under the binding authority agreements,, Certain Underwriters is only a "front" to permit the use of the prestigious "Lloyd's of London" name and apparent status as an eligible surplus lines

insurer to sell VPI to the Florida public. *See* Gallagher Affidavit, ¶ 7(F).⁶ Further, by selling VPI through the surplus lines market, Defendants developed a strategy to keep VPI from consumer protection oversight provided in Chapter 627, Florida Statutes, specifically rate and form regulation. *See generally* §§ 626.913, 627.021, 627.061, 627.410, Fla. Stat. Not filing the rates and forms for VPI is an essential part of this scheme because the Florida Department of Insurance, now known as the OIR, would not have approved VPI through its consumer protection regulations. *See* Gallagher Affidavit, ¶ 7(E).

The Nation Safe Defendants then entered into agreements with Direct General Financial Services, Inc., Direct General Insurance Agency, Inc., and Direct General Insurance Company (collectively, the “Direct General Defendants”) to market, sell, finance, and partially administer the VPI policies for the Nation Safe Defendants. Complaint, ¶¶ 27, 29; Doc. 41-1; Doc. 41-2. Direct General Agency, Inc.’s employees are the exclusive producing agents for VPI in the State of Florida. *See* Exh. 4, Kalmanson Deposition, at 67-68. Interestingly, the Direct General Defendants have admitted that they keep an 80% commission on VPI, *see* the Direct General Defendants’ Second Affidavit, (Doc. 67), while taking absolutely no risk, and at the same time “tak[ing] advantage of [its] largely fixed cost neighborhood sales offices staffed by company employees to generate commission income for [the Direct Defendants] with minimal incremental

⁶ According to the binding authority agreements, Certain Underwriters was paid **\$2.25** per year for each VPI policy sold. The policies were sold to the general public for **\$170.00** the same year.

cost.”⁷ In short, VPI is an extremely profitable business for the Direct General Defendants – **no risk, minimal costs, big returns.**⁸ To make it worse, the Subclass members then finance these essentially worthless products at exorbitant interest rate, making the Defendants more money. Based on the huge amounts of profit to the Defendants, combined with the worthless nature of the product and the fact that those who buy VPI are merely attempting to purchase PIP/PD insurance, which is all that is required to operate a car under Florida law (and are not coming into the agency to purchase an ancillary add-on), Plaintiffs assert that VPI is an insurance product in search of a customer. *See* Gallagher Affidavit, ¶ 7(D).

B. Common Proof of Statutory Violations

Generally, Plaintiffs allege that because VPI does not comply with the Florida Surplus Lines Law, the policies are unauthorized, unregulated, and are void *ab initio* under Florida law. Complaint, ¶¶ 37, 43, 45, 87. Specifically, Plaintiffs allege that in connection with the scheme concocted by the Kalmanson Defendants to sell VPI under an agency agreement with the Nation Safe Defendants through the Direct General Defendants and carrying the “Lloyd’s of London” brand name, VPI is not authorized under the surplus lines law and is not exempt from the consumer protections afforded by Chapter 627, Florida Statutes (including rate and form

⁷ *See* Direct General Corporation’s Form 10-K (2007), at 9 (<http://www.sec.gov/Archives/edgar/data/1023031/000095014407002270/g06064e10vk.htm>). Due to a March 2007 merger between Direct General Corporation and Elara Holdings, Inc. that included an agreement to take the company private, Direct General Corporation is no longer required to make SEC filings. *Id.* at 1.

⁸ The methods used by Direct General Insurance Agency, Inc. to sell its ancillary products, including VPI, have also been the subject of extensive investigations by the DFS, which found that Direct General’s agents used an illegal sales strategy called sliding (selling a product to an unknowing purchaser). *See* Amended Consent Order at Doc. 18-15; § 626.9541(1)(z), Fla. Stat.; Docs. 18-10 and 18-11 (Consent Orders against the Direct General Defendants for failing to comply with their diligent effort requirements under § 626.916(1)(a)). While DFS fined Direct General \$100,000 in 2008, this is a paltry sum compared to the \$26 million in premiums charged to the class in premiums for an essentially worthless product. In short, VPI, with a mere cost of \$2.25 paid to the underwriters of the policy, Certain Underwriters, but costing Plaintiffs and the members of the proposed Class \$170.00, is an excessive and unconscionable product that is only sold because Defendants have concocted a scheme to escape rate and form regulation. It should be noted that the DFS investigation did not review the VPI product itself, just the manner in which it agents and agencies sold the product to consumers. Product investigations and market conduct studies are performed by the OIR, *see* §§ 624.316 and 624.3161, Fla. Stat., while agent and agency conduct is reviewed by the DFS under § 624.317, Fla. Stat.

regulation) because the policies were not eligible for export, they were not sold by an eligible surplus lines insurer, and they did not contain the language required by the Florida Surplus Lines law, and, consequently, were not authorized to be sold in accordance with the Florida Surplus Lines Law. *Id.* at ¶¶ 37, 38. All of these claims will be established with common proof.

Plaintiffs' assertion that Certain Underwriters is not an eligible surplus lines insurer under § 626.914(2) will be established using objective evidence that is currently the subject of a motion to compel, (Doc. 76). *See Richmond Manor Apts., Inc. v. Certain Underwriters at Lloyd's London*, No. 09-60796-CIV (S.D. Fla. Oct. 25, 2010) (Order at Doc. 47-1). Whether VPI can be procured by authorized insurers outside of the surplus lines market under § 626.916(1)(a) is also subject to common proof that will be established by one of Plaintiffs' experts, former Florida Insurance Commission, Mr. Gallagher. *See* Gallagher Affidavit at ¶ 7(A)(1).

Whether Defendants have satisfied their "diligent effort" requirements is also subject to class-wide proof. *See* Gallagher Affidavit, ¶ 7(A)(2) (citing Kalmanson Order, Exh. 2, *see supra* note 2, finding that Mr. Kalmanson violated the due diligence requirements under § 626.916(1)(a) based on admitted conduct and further finding that the producing agents, as a general pattern and practice of doing business, did not satisfy the diligent effort requirements). Defendants' violations of § 626.924 will also be established by objectively looking at the form VPI policy itself because the forms fail to include mandatory disclosures. *Id.* at ¶ 7(B); Complaint, ¶ 42; Gallagher Affidavit, ¶ 7(B). Plaintiffs will establish, with expert testimony using Defendants' own records (claims history and other expenses) that the VPI policy is essentially valueless and, consequently, the VPI policy forms are unconscionable and illusory. Gallagher Affidavit, ¶ 7(D); Complaint, ¶¶ 36, 76.

Finally, regarding claims of the Subclass, proof to establish a violation of § 627.8405 will be established by again objectively determining whether the form VPI policy is the type that cannot be financed under the statute. Gallagher Affidavit, ¶ 7(C); Complaint, ¶¶ 70-75, 87.

C. Typical Claims For Relief

In connection with their allegations, Plaintiffs seek equitable relief and damages under the illegality doctrine, which provides that a contract issued in violation of Florida law is void *ab initio* and unenforceable and that an innocent party to such a contract is entitled to restitution. *See London v. Wal-Mart Stores, Inc.*, 340 F.3d 1246, 1252 (11th Cir. 2003) (“Florida courts recognize paying consideration for an illegal contract is an injury per se.”); *Veal v. Crown Auto Dealerships, Inc.*, 236 F.R.D. 572, 581-82 (M.D. Fla. 2006) (certifying class claims for restitution and unjust enrichment); *Vista Designs, Inc. v. Silverman*, 774 So. 2d 884, 886 (Fla. 4th DCA 2001) (“courts should not lend their aid to the enforcement of contracts where performance would tend to deprive the public of the benefits of regulatory measures”).

Plaintiffs also seek statutory damages under § 627.835, which provides a private cause of action against Defendants for their violations of § 627.8405’s prohibition against the premium financing of unregulated insurance products and automobile club memberships. *See Sosa v. Safeway Premium Fin. Co.*, 73 So. 3d 91, 116 (Fla. 2011) (upholding class action claims for violations of § 627.835). Plaintiffs also seek a declaratory judgment from the Court determining that Defendants’ conduct in marketing, issuing, and selling VPI is illegal because it is not authorized under the Florida Surplus Lines Law and is not subject to Chapter 627 based on Defendants’ failure to adhere to rate and form regulation required by the Florida Insurance Code.

Each member of the Class that applied for VPI did so using standard, uniform application materials. *See* Docs. 18-3, 18-5. The VPI policies were also standard, uniform insurance policies

that contained the same coverage for each member of the Class. *See* Docs. 18-2, 18-6, 18-4, 18-7. Therefore, to the extent VPI violates the referenced provisions of the Florida Insurance Code and applicable Florida law, including the illegality doctrine, such violations would apply to each VPI policy issued to each member of the Class.⁹

III. ARGUMENT

A. General Considerations

Class actions serve three essential purposes: (1) facilitate judicial economy by the avoidance of multiple suits on the same subject matter; (2) provide a feasible means for asserting the rights of those who would have no realistic day in court if a class action were not available; and (3) deter inconsistent results, assuring a uniform, singular determination of rights and liabilities. *American Pipe & Constr., Co. v. Utah*, 414 U.S. 538, 550 (1974).

“Generally, the rule for class certification is liberally construed to meet its objectives.” *Grillasca v. Hess Corp.*, 8:05-cv-1736-T-17TGW, 2007 WL 2121726, *4 (M.D. Fla. July 24, 2007). “[I]n determining whether to certify a class, the Court is to accept Plaintiffs’ substantive allegations as true.” *Edmonds v. Levine*, 233 F.R.D. 638, 640 (S.D. Fla. 2006). “[A] court’s determination regarding certification of a class must be based upon whether the class satisfies the requirements of Rule 23, and not based upon an inquiry into the merits of the plaintiffs’ claim.”

⁹ In response to Plaintiffs’ allegations, Defendants argue that (i) VPI is regulated (Doc. 4, at 9; Doc. 18, at 8; Doc. 20, at 9; Doc. 21, at 9; Doc. 22, at 9); (ii) VPI is not unauthorized (Doc. 18, at 11); (iii) even if VPI is unauthorized, it is not void or illegal (Doc. 4, at 11; Doc. 20 at 11; Doc. 21, at 10; Doc. 22, at 11); (iv) VPI is not a worthless, illusory product (Doc. 4, at 12; Doc. 20, at 12; Doc. 21, at 11; Doc. 22, at 12); (v) Certain Underwriters did not breach its contracts with Plaintiffs (Doc. 4, at 13); (vi) Certain Underwriters did not breach the covenant of good faith and fair dealing (Doc. 4, at 15); (vii) Plaintiffs have no claim for unjust enrichment (Doc. 4, at 17; Doc. 18, at 22); (viii) Plaintiffs lack standing to seek declaratory relief (Doc. 4, at 17; Doc. 18, at 22; Doc. 20, at 13; Doc. 21, at 13; Doc. 22, at 13); (ix) Plaintiffs failed to exhaust their administrative remedies (Doc. 18, at 4); (x) Plaintiffs have no cause of action under §§ 627.835 and 627.8405 (Doc. 18, at 12); (xi) VPI is not void under the illegality doctrine (Doc. 18, at 14); (xii) Defendants complied with the Florida Insurance Code (Doc. 18, at 16); and (xiii) Certain Underwriters is an eligible surplus lines insurer (Doc. 4, at 7; Doc. 18, at 16). Because Defendants will likely attempt to establish these defenses with evidence that will apply to Plaintiffs and the entire Class, they present common questions of law that predominate.

Id. (citing *Eisen v. Carlyle & Jacquelin*, 417 U.S. 156, 178 (1974));¹⁰ see also *Hudson v. Delta Air Lines, Inc.*, 90 F.3d 451, 457 (11th Cir. 1996) (“We stress initially that the merits of the plaintiffs’ claims are not before us.”) (citing *Eisen*, 417 U.S. at 177-78); *Gaalswijk-Knetzke v. Receivables Mgmt. Servs. Corp.*, No. 8:08-cv-493-T-26TGW, 2008 WL 3850657, *2 (M.D. Fla. Aug. 14, 2008) (granting class certification and stating that to “determine whether a class should be certified in this case, the Court must not decide the merits of the claim”); *Veal*, 236 F.R.D. at 577 (citing *Kirkpatrick v. J.C. Bradford & Co.*, 872 F.2d 718, 722 (11th Cir. 1987)). Any doubt, however, should be resolved in favor of certification. *Powers v. Stuart-James Co.*, 707 F. Supp. 499, 502 (M.D. Fla. 1989); *CV Reit, Inc. v. Levy*, 144 F.R.D. 690, 695 (S.D. Fla. 1992).

B. Rule 23(a) – Numerosity, Commonality, Typicality, and Adequacy

1. Numerosity

The first element of Rule 23(a) – numerosity – requires only that joinder be “impracticable.” There is no “strict numerosity test” to determine when this numerosity threshold is reached.

The Court has discretion to make assumptions when determining numerosity. *Agan v. Katzman & Korr, P.A.*, 222 F.R.D. 692, 696 (S.D. Fla. 2004) (citing *Evans v. U.S. Pipe & Foundry*, 696 F.2d 925, 930 (11th Cir. 1983)). “It is not necessary that the precise number of class members be known.” *Id.* “The Court may ‘make common sense assumptions in order to find support for numerosity.’” *Hively v. Northlake Foods, Inc.*, 191 F.R.D. 661, 666 (M.D. Fla. 2000) (quoting *Evans*, 696 F.2d at 930). A “plaintiff’s estimate need only be reasonable.” *Fabricant v. Sears Roebuck*, 202 F.R.D. 310, 313 (S.D. Fla. 2001).

¹⁰ Yet, in determining whether class certification is appropriate under Rule 23, it is sometimes necessary for a court to analyze the substantive claims and defenses of the parties and the essential elements of those claims and defenses. *Joseph v. General Motors*, 109 F.R.D. 635, 638 (D. Colo. 1986) (citation omitted). “Nevertheless, there is a [clear] distinction between identifying the issues that the case will present, for purposes of determining whether the requirements of Rule 23 have been met, and deciding those issues on the merits.” *Id.*

There can be no genuine dispute over numerosity here. Not only have Plaintiffs alleged that there are thousands of Class Members, *see* Complaint at ¶ 48, but also the Direct General Defendants testified that they collected over \$26 million in VPI premiums for just 2007 and 2008 (because each policy costs \$170, there are over 140,000 policies at issue for those two years of the class period), and Defendants have produced internal premium logs demonstrating the thousands of policies sold to the Class. *See supra* note 5 and related discussion; Doc. 9-14. Given the size of the Class, there is no doubt that the amount of potential Class members is so numerous that joinder would be impracticable. Thus, Plaintiffs have satisfied Rule 23(a)(1).

2. Commonality

Commonality, the second threshold requirement under Rule 23(a), is present when “there are common questions of law or fact among the members of the class.” Fed. R. Civ. P. 23(a)(2). The threshold of “commonality” is not high. The Supreme Court has stated that class relief is especially appropriate when an issue common to all class members may be litigated economically by virtue of a class action because the issue turns on a question of law equally applicable to all members of the class. *Califano v. Yamasaki*, 442 U.S. 682, 700-01 (1979). Rule 23 does *not* require denial of class certification merely because the claim of one or more class representatives arises in a factual context that varies somewhat from that of other plaintiffs. *Cox v. American Cast Iron Pipe Co.*, 784 F.2d 1546, 1557 (11th Cir. 1986) (“Rule 23 does not require that all the questions of law and fact raised by the dispute be common. . . . The claims actually litigated in the suit must simply be those fairly represented by the named plaintiffs.”).

The moving party is not required to present “carbon copy” claims. “Commonality requires at least one issue common to all members of the class, but does not require that all factual and legal questions be common.” *Agan*, 222 F.R.D. at 697. “A sufficient nexus is

established if the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory.” *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984), *cert. denied*, 470 U.S. 1004 (1985) (emphasis supplied). In addition, ““where a common scheme of deceptive conduct is alleged, common questions of law and/or fact will exist.”” *Brinker v. Chicago Title Ins. Co.*, No. 8:10-cv-1199-T-27AEP, 2012 WL 1081211, *5 (M.D. Fla. Feb. 9, 2012) (quoting *Walco Invs., Inc. v. Thenen*, 168 F.R.D. 315, 325 (S.D. Fla. 1996)).

As the Rule and case law explicitly state, the Court need only find a *single* common issue. Here, Plaintiffs allege multiple common questions of law and fact:

- whether VPI is procurable in the admitted insurance market (Plaintiffs’ expert has opined that it is, *see* Gallagher Affidavit at ¶ 7(A)(1));
- whether Defendants’ pattern and practice used to satisfy the “diligent effort” requirements comply with the requirements of § 626.916(1)(a) (Plaintiffs’ expert has opined that it does not, *see* Gallagher Affidavit at ¶ 7(A)(2));
- whether the VPI policy itself contains language required by § 626.924 (Plaintiffs’ expert has opined that it does not, *see* Gallagher Affidavit at ¶ 7(B)),
- whether Certain Underwriters in this case are eligible surplus lines insurers under Florida law (Plaintiffs’ expert has opined that they are not, *see* Gallagher Affidavit at ¶ 7(F));
- whether, based on Defendants’ multiple violations of the Florida Surplus Lines Law, VPI is authorized under § 626.915;
- whether VPI was exempt from Chapter 627;
- whether Defendants properly submitted VPI for form and rate approval if VPI is not exempt from Chapter 627;
- whether Defendants’ violations of law render VPI illegal, requiring restitution;
- whether VPI is an automobile club membership under the law;
- whether parts of VPI are unregulated under the Florida Insurance Code; and

- whether financing VPI is prohibited under Florida law.

As Plaintiffs' allegations and factual submissions demonstrate, their claims for breach of contract, unjust enrichment, restitution, declaratory relief, and under § 627.835 are entirely based on Defendants' course of conduct that applies equally to Plaintiffs and the members of the Class. *See Fabricant*, 202 F.R.D. at 313 ("Where, as here, the allegations involve a common course of conduct by the defendant, class members claims involve common questions of law or fact.").

In addition, Defendants have asserted common defenses to Plaintiffs' allegations, *see supra* note 9, which will also be supported by common facts that apply equally to Plaintiffs and all the members of the proposed Class. Therefore, these claims and defenses will turn on facts and law common to all Class members. Because there are numerous common question of law or fact germane to liability here, Plaintiffs have satisfied Rule 23(a)(2).

3. Typicality

Rule 23(a)(3) requires that the "claims or defenses of the representative parties [be] typical of the claims or defenses of the class." This "typicality" requirement is met when the claims of the representative plaintiffs arise from the same course of conduct that gives rise to the claims of the other class members, and where the claims are based upon similar legal theories and are not antagonistic to those of the class. *Pottinger v. City of Miami*, 720 F. Supp. 955, 959 (S.D. Fla. 1989). Typicality and commonality are related, with commonality referring to the group characteristics of the class as a whole, and typicality focusing on the named plaintiffs' claims in relation to the class. *In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. 672, 686 n.23 (S.D. Fla. 2004).

Typicality does not require identical claims or defenses, and a "factual variation will not render a class representative's claim atypical unless the factual position of the representative

markedly differs from that of other members of the class.” *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984). Indeed, any alleged atypicality between the named plaintiffs’ claims and those of the class “must be clear and must be such that the interests of the class are placed in significant jeopardy.” *Walco Invs., Inc. v. Thenen*, 168 F.R.D. 315, 326 (S.D. Fla. 1996). Nor do variations in the amount of damages vitiate typicality. *Kornberg*, 741 F.2d at 1337; *In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. at 687. Here, typicality is easily met. As Plaintiffs have alleged, Defendants issued and sold VPI to Plaintiffs and the members of the Class in violation of the Florida Insurance Code and applicable law, including the illegality doctrine. All Class members’ claims arise from Defendants’ business practices in attempting to avoid rate and form regulation from the OIR by selling VPI in the surplus lines market, which practices give rise to Plaintiffs’ claims and are based on the same legal theories. Accordingly, because the required proof is the same for the claims of the proposed Class, and is based on the same legal theories, Plaintiffs’ claims are typical of those of the Class, and there is nothing atypical about Plaintiffs’ claims compared to the claims of the Class members. Plaintiffs allege and have established that their claims are identical to the claims of the Class members, all of whom received the same VPI application and policy documentation, and that all members of the Class seek the same remedies. *See* Complaint, ¶ 51.

Moreover, Plaintiffs’ claims and the claims of the members of the Class are not antagonistic in any way. Indeed, the Plaintiffs are both victims of the Defendants scheme and do not have any individual interest or claims that will affect their ability to serve as a class representative. Finally, there are no unique or different factual issues that will affect the Class and Plaintiffs’ claims; both bought the same VPI product that was sold and issued by the same

Defendants in a manner, which violates the law and gives rise to the Plaintiffs cause of action. Accordingly, the Plaintiffs have met the typicality requirement.

4. Adequacy

The final threshold requirement under Rule 23(a) is adequacy. Fed. R. Civ. P. 23(a)(4). The inquiry as to the adequacy of the proposed class representative focuses on two facts: (1) the representative must have interests common with the unnamed members of the class; and (2) it must be shown that the representative – through qualified counsel – will vigorously prosecute the interests of the Class.

The adequacy requirement inherently overlaps the typicality requirement because the success of the class representative's claims will determine the success of the other class members' claims. Therefore, the vigorous prosecution of the class representative's own claims will naturally benefit the other class members. Unless there exists some antagonism or conflict between the class representative and the class, adequacy is generally satisfied if the class representative's claims are typical. *Pottinger*, 720 F. Supp. at 959 (citing *Gonzales v. Cassidy*, 474 F.2d 67, 72 (5th Cir. 1973)).

Plaintiffs have sworn in their affidavits that they are willing to serve as the Class representatives, they understand their duties and obligations, and they are willing to fulfill them. *See Composite Exhibit 5* (Plaintiffs' Declarations in Support of Class Certification). *See Veal*, 236 F.R.D. at 579 (granting class certification in consumer action).

The attorney competence prong involves questions of whether representatives' counsel are qualified, experienced, and generally able to conduct the proposed litigation. *See Composite Exhibit 6* (Declarations of Plaintiffs' Counsel in support of Class Certification). Plaintiffs' counsel will continue to vigorously prosecute this action on behalf of the Class. *Id.*

In all other respects, Plaintiffs more than satisfy the legal standard for adequacy. Given the identical nature of claims between Plaintiffs and the Class, there is no potential for conflicting interests in this action, and there is no antagonism between Plaintiffs' interests and those of the Class. Accordingly, Plaintiffs have met the adequacy requirement of Rule 23(a)(4).

C. The Class Should Be Certified Under Rule 23(b)(3).

In addition to satisfying the four prerequisites of Rule 23(a), a class must also satisfy one of the subdivisions of Rule 23(b). Here, Plaintiffs seek certification under Rule 23(b)(3).¹¹

Rule 23(b)(3) requires that (i) common questions of law and fact predominate over "any questions affecting only individual class members," and (ii) "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). "Under Rule 23(b)(3) it is not necessary that all questions of law or fact be common, but only that some questions are common and that they predominate over the individual questions." *Klay v. Humana, Inc.*, 382 F.3d 1241, 1254 (11th Cir. 2004).

1. Common questions predominate.

"Common issues of fact and law predominate if they 'have a direct impact on every class member's effort to establish liability and on every class member's entitlement to injunctive and monetary relief.'" *Klay* at 1255; *see also Moore v. Painewebber, Inc.*, 306 F.3d 1247, 1252 (2d Cir. 2002) (common issues predominate "if resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only

¹¹ If the Court certifies the Class under Rule 23(b)(3), Plaintiffs request that the Court also certify Plaintiffs' claims for declaratory relief in Count II under Rule 23(b)(2), which applies when declaratory relief would provide relief to each member of the class, *i.e.*, "the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2557 (2011). The Eleventh Circuit recognizes that "hybrid" (b)(2) and (b)(3) cases can be maintained and effectively managed. *Williams v. Mohawk Inds., Inc.*, 568 F.3d 1350, 1360 (11th Cir. 2009).

to individualized proof.”). It is not necessary that all questions of law or fact be common; only some questions must be common, and they must predominate over individual questions. *Klay*, 382 F.3d at 1254; *see also In re Visa Check/Master Money Antitrust Litig.*, 280 F.3d 124, 140 (2d Cir. 2001) (the rule “calls only for predominance, not exclusivity, of common questions”).

The predominance inquiry seeks to determine the evidentiary effect of adding plaintiffs to the Class. If adding more plaintiffs requires the introduction of “significant amounts of new evidence,” this suggests that individual issues are important. *Klay*, 382 F.3d at 1255. Conversely, if adding more plaintiffs leaves the amount of evidence needed to prove the claims “relatively undisturbed,” common issues likely predominate. *Id.*

Numerous courts have held that “the presence of individualized damages issues does not prevent a finding that the common issues in the case predominate.” *Allapattah Servs., Inc. v. Exxon Corp.*, 333 F.3d 1248, 1261 (11th Cir. 2003) (affirming class certification; “If the only issue is to determine the amount of damages which class members are entitled to receive and this determination can be accomplished almost mechanically, simple proofs similar to those used for summary judgment are often appropriate . . . especially when individual claims are small or relatively modest”); *see also In County of Monroe, Florida v. Priceline.com, Inc.*, 265 F.R.D. 659, 671 (S.D. Fla. 2010) (common questions can predominate in unjust enrichment claims where “the defendant’s conduct is the same as to all members of the putative class”).

Here, the Defendants' course of conduct under which they created, marketed, issued, and sold a form¹² "insurance" product violates the Florida Insurance Code and applicable law, which entitles the class to relief based on the illegality doctrine, common law restitution and unjust enrichment.¹³ *See supra* § II. The course of conduct gives rise to numerous common questions of law and/or fact. *See supra* § III.B.2.

Defendants have argued that its conduct is not illegal, they complied with the Florida Insurance Code, and that the VPI policies are not illegal contracts because VPI is authorized surplus lines insurance. *See generally* Docs. 4, 18, 20, 21, and 22. These arguments in response to the allegations in the Complaint are identical for Plaintiffs as well as the proposed Class giving rise to more common questions of law and fact.

Not only do all of these common questions, when answered, have a direct impact on each Class members' claims for liability and damages, **they will conclusively establish** each Class members' claim without the introduction of any additional evidence. And if these common questions of liability are resolved in favor of Plaintiffs and the Class, all that would remain would be a mechanical computation of the amount of damages suffered by each Class member. *See Fla. Stat. § 627.835.* (providing recovery of twice the amount of any unauthorized premium

¹² "An overwhelming number of courts have held that claims arising out of form contracts are particularly appropriate for class action treatment." *Dupler v. Costco Wholesale Corp.*, 249 F.R.D. 29, 37-38 (E.D.N.Y. 2008) (collecting cases); *see Steinberg v. Nationwide Mut. Ins. Co.*, 224 F.R.D. 67, 74 (E.D.N.Y. 2004); *Mortimore v. FDIC*, 197 F.R.D. 432, 438 (W.D. Wash. 2000); *Leszczynski v. Allianz Ins.*, 176 F.R.D. 659, 672 (S.D. Fla. 1997); interpretations of a form contract appear to present the classic case for treatment as a class action," and collecting numerous cases in which such claims were certified); *Kleiner v. First Nat'l Bank of Atlanta*, 97 F.R.D. 683, 692 (N.D.Ga.1983) (noting that "claims arising from interpretations of a form contract appear to present the classic case for treatment as a class action," and collecting numerous cases in which such claims were certified).

¹³ Class claims based on unconscionability and unjust enrichment arising from a Defendants uniform conduct predominate over individual issues and should be certified. *In re Checking Account Overdraft Litigation*, 2012 WL 1134483, 11 (S.D. Fla. 2012) (unconscionability and unjust enrichment claims predominate when claims arise out of the Defendants uniform conduct); *James D. Hinson Elec. Contr. Co. v. BellSouth Telecomms., Inc.*, 275 F.R.D. 638, 647 (M.D.Fla.2011) (certifying unjust enrichment class); *In re Nat'l W. Life Ins. Deferred Annuities Litig.*, 268 F.R.D. 652, 669 (S.D.Cal.2010) (certifying unjust enrichment class); *In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. 672, 698 (S.D.Fla.2004) (certifying unjust enrichment class); *Dienese v. McKenzie Check Advance of Wis., L.L.C.*, 2000 WL 34511333, *5-6 (E.D. Wis. Dec. 11, 2000) (citing cases approving certifying common law unconscionability claims).

finance charge); *London*, 340 F.3d at 1252 (plaintiff is entitled to restitution for any consideration paid in connection with an illegal contract).

It is difficult to perceive any individual claims that will effect liability in this action, but even if some do exist, the overwhelming number of issues in this case are common to all class members and accordingly, the common issues predominate over any individual issues.

2. A class action is superior to other available methods.

Under Rule 23(b)(3), “the predominance analysis . . . has a tremendous impact on the superiority analysis . . . for the simple reason that, the more common issues predominate over individual issues, the more desirable a class action lawsuit will be as a vehicle for adjudicating the plaintiffs’ claims.” *Klay*, 382 F.3d at 1269. “If a district court determines that issues common to all class members predominate over individual issues, then a class action will likely be more manageable than and superior to individual actions.” *Williams v. Mohawk Inds., Inc.*, 568 F.3d 1350, 1358 (11th Cir. 2009). The superiority requirement comes down to whether the class treatment makes sense and is manageable.

In this case, the Court should “consider whether the class members would be aware of their rights” absent class certification, and also the “the improbability that large numbers of class members would possess the initiative to litigate individually.” *Fabricant*, 202 F.R.D. at 318; *see also Hicks v. Client Servs.*, 257 F.R.D. 699, 701 (S.D. Fla. 2009) (a court should “consider whether the class members would be aware of their rights” absent class certification).

The superiority inquiry is a “comparative analysis between judicial remedies and does not contemplate the possibility that no action at all might be superior to a class action in a given case.” *Brown v. Cameron-Brown*, 92 F.R.D. 32, 49 (E.D. Va. 1981); *duPont Glove Forgan Inc. v. American Tel. & Tel. Co.*, 69 F.R.D. 481, 488 (S.D.N.Y. 1975). Thus, a class action is

obviously superior to the alternative that would leave the class without any redress. *Lai v. Anthony*, No. 88-00565MP, 1991 WL 208443, *8 (D. Haw. July 5, 1991).

Superiority is based on four factors: (a) the class members' interests in individually controlling the prosecution of separate actions; (b) the extent and nature of any litigation concerning the controversy already begun by or against class members; (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (d) the likely difficulties in managing a class action. Fed. R. Civ. P. 23(b)(3)(A)-(D). Here, both the general principles relevant to this issue and the four specific factors establish that a class action is the superior method to resolve these claims.

Because this case involves relatively small individual claims compared to the cost of litigating complex legal and technical issues against large corporate entities like Defendants, interest in individual control of separate actions is negligible. *See* Fed. R. Civ. P. 23(b)(3)(A). In addition, Plaintiffs are not aware of any other similar actions against Defendants that are pending in Florida, so there is no threat of inconsistent adjudications. *See* Fed. R. Civ. P. 23(b)(3)(B).¹⁴

With respect to Rule 23(b)(3)(C), "there are typically three main reasons why it is desirable to litigate multiple parties' claims in a single forum": (1) class actions offer substantial economies of time, effort, and expense for the litigants and the Court; (2) class actions often involve an aggregation of small individual claims, where a large number of claims are required to make it economical to bring suit; and (3) it is desirable to concentrate claims in a particular forum when that forum has already handled several preliminary matters. *Klay*, 382 F.3d at 1270.

Here, litigating this action in one forum – the Middle District of Florida – will allow the parties and the Court, in light of the number of potential claimants, to conserve resources, prevent duplication of effort, provide for the efficient resolution of this case, and prevent

¹⁴ *See also* Plaintiffs' Reply in Support of Motion for Remand, (Doc. 69), at 2, n.3.

inconsistent results. Additionally, this Court should note, as many other courts have done, that it would be extremely costly for individuals to proceed against large corporate entities like Defendants. *See, e.g., Singer v. AT&T Corp.*, 185 F.R.D. 681, 692 (S.D. Fla. 1998). Moreover, the Court will likely resolve several preliminary pre-certification issues in this case.

Finally, Rule 23(b)(3)(D) considers whether the proposed class action will be unmanageable. While some manageability issues are inherent in any class action, as discussed above on issues of common proof, this action largely addresses issues of fact and law common to all Class members and will employ class-wide proof of most, if not all, elements of Plaintiffs' claims and Defendants' defenses, *i.e.*, VPI was not issued to Plaintiffs and the members of the Class in violation of the Florida Insurance Code. Such evidence will not vary among Class members. Therefore, trial of this suit would present no manageability problems that would preclude class certification, and neither the size of the Class, nor the possibility of individual damages determinations, are unusually large or unmanageable. *See* Plaintiffs' proposed Trial Plan, attached as **Exhibit 7**.¹⁵ A review of the factors listed in Rule 23(b)(3)(A)-(D) reveals that a class action is the superior method of adjudicating this controversy. There are potentially hundreds of thousands of Class members, and a majority of them will not, in all likelihood, pursue individual lawsuits. The amount in controversy for each individual potential class member is minimal compared to the vast amount of litigation costs and attorneys' fees required to prosecute their individual claims. *See Williams v. Wells Fargo Bank, N.A.*, No. 1:11-CIV-21233-SCOLA, 2012 WL 566067, *9 (S.D. Fla. Feb. 21, 2012) ("Since the damage amounts allegedly owed to each individual [plaintiff] is relatively low -- especially as compared to the

¹⁵ While Rule 23 does not require submission of a trial plan, "[a]n increasing number of courts require a party requesting class certification to present a 'trial plan' that describes the issues likely to be presented at trial and tests whether they are susceptible of class-wide proof." Fed. R. Civ. P. 23, Advisory Committee Note. The Eleventh Circuit does not require, but recommends them. *See Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1279 n.20 (11th Cir. 2009).

costs of prosecuting the types of claims in this case involving complex, multi-level business transactions between sophisticated Defendants – the economic reality is that many of the class members would never be able to prosecute their claims through individual lawsuits.”).

Finally, the court in *Fabricant* certified a class under Rule 23(b)(3) based on Plaintiffs’ claims for restitution under illegal contracts that were void *ab initio* under Florida law “on the same basis.” *Fabricant*, 202 F.R.D. at 320. Accordingly, because class action treatment of the claims presented in this case is far superior to other methods for adjudicating this controversy, and may be the only economically feasible mechanism for presenting these claims, class certification is compelled by both the letter and spirit of Rule 23.

IV. CONCLUSION AND REQUEST FOR ORAL ARGUMENT

Plaintiffs request that (1) the Court certify the Class under Rule 23(b), (2) Plaintiffs be designated Class representatives, (3) Plaintiffs’ counsel be designated as Class counsel, with J. Daniel Clark and Edward Zebersky as co-lead class counsel under Rule 23(g), and (4) reasonable and adequate notice be provided to the Class at Defendants’ expense under Rule 23(c). Plaintiffs also request oral argument, which Plaintiffs estimate should take four hours.

[Attorney signatures appear on the following page]

Respectfully submitted,

s/ J. Daniel Clark

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CERTIFICATE OF SERVICE

I certify that on April 23, 2012, the foregoing was filed with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to counsel of record.

s/ J. Daniel Clark
Attorney

83-1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GARDITH S. LEMY, *et al.*,

Plaintiffs,

v.

Case No.: 8:11-cv-2722-T-23AEP

DIRECT GENERAL FINANCE COMPANY,
et al.,

Defendants.

**AFFIDAVIT OF C. THOMAS GALLAGHER
IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

BEFORE ME, the undersigned authority, personally appeared C. Thomas Gallagher, who being over the age of majority and competent, deposes and says:

1. My name is C. Thomas Gallagher and I am over the age of 18. I currently reside in Tallahassee, Florida.

2. I have been involved in the insurance industry for the last 40 years. I was the Florida Insurance Commissioner from 1989 to 1995 and 2001 to 2003. As the Insurance Commissioner, I was responsible for overseeing numerous aspects of insurance regulation in the State of Florida, including whether particular insurance policies or products were eligible for export under the Florida Surplus Lines Insurance Law. A copy of my Curriculum Vitae is attached as **Exhibit A**.

3. I am also familiar with products similar to "Vehicle Protection Insurance" (VPI) which is the subject of this action. As Insurance Commissioner for the State of Florida I was involved in the investigation of Direct General Agency, Inc. and other agencies throughout the State of Florida in their sale of ancillary products and I am familiar with those products. When I

was Insurance Commissioner, the Department of Insurance's Fraud Division under my direction conducted multiple sting operations dealing with insurance agencies and agents who sold these types of products to illegally enhance agents and agencies' income.

4. I was retained by the Clark & Martino, P.A. and Zebersky & Payne, LLP law firms to serve as an expert in this matter. I was asked to review the VPI product, which is sold as an ancillary (add on) product to mandatory PIP/PD insurance, supposedly underwritten by Certain Underwriters at Lloyds. Specifically, I was asked, based upon my knowledge and experience in the regulation of the insurance industry in the State of Florida: 1) whether VPI was and is eligible for export under Florida Surplus Lines law; 2) whether VPI was sold in violation of other provisions of the Florida Surplus Lines Law; 3) whether VPI policies are unconscionable or have any real value to the insureds; 4) whether VPI can be financed under Florida's Premium Finance Statute; and 5) whether Certain Underwriters at Lloyds are true insurers under VPI insurance or whether it is merely used as a fronting entity to sell this product through the Surplus Lines market.

5. My preliminary opinions in this case are set forth in this Affidavit (as well as my earlier filed Affidavit dated September 29, 2011, incorporate herein), without limitation as I may have additional opinions as discovery of new information provided to me.

6. In conducting my analysis, I have reviewed documents delivered to me by plaintiffs' counsel that were produced during discovery, pleadings, and other filings, including the Binding Authority Agreements at issue in this case, relevant Florida Statutes, and certain DOAH recommendations and agency final orders.

7. Based on my knowledge and experience as the insurance regulator in the State of Florida, here are my opinions with respect to the questions above:

A. VPI is not eligible for export under § 626.916, Florida Statutes for the following reasons:

(1) The full amount of insurance provided under VPI is procurable from one or more authorized insurers in Florida. *See* § 626.916(1)(a), Fla. Stat. Such coverage is available in the Florida insurance market through authorized insurers and automobile clubs and is not coverage required under Florida's automobile No Fault Law.

(2) Neither the producing agent nor the surplus lines agent complied with their diligent effort requirements under Florida Statutes.

a. Nation Motor Club, Inc. and Direct General Insurance Agency, Inc., who are the producing agents here, failed to conduct a diligent search to determine if the full amount of insurance under VPI was procurable in Florida as required under § 626.916(1)(a), Florida Statutes.

b. Kalmanson, who is the surplus lines agent, did not verify that a diligent effort was made by the producing agents as required by law. *See* Final Order (In Re: Mitchell Kalmanson).

c. The lack of a diligent effort (or verification of a diligent effort) was found in multiple documents including agency final orders (In Re: Direct General Insurance Agency, Inc. and other individual agents who are employed by Direct General Insurance Agency, Inc.) and a DOAH report and recommendation (In Re: Mitchell Kalmanson), which establish that the pattern and practice

regarding the sale of VPI did not include an appropriate diligent effort in order to satisfy that requirement under Florida law. Those same documents establish that Kalmanson did not verify that a diligent effort was made.

B. The VPI policies were required to include the following language in capital letters, required under § 626.924, Florida Statutes:

THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW. PERSONS INSURED BY SURPLUS LINES CARRIERS DO NOT HAVE THE PROTECTION OF THE FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT UNLICENSED INSURER.

The VPI policies did not include this language.

C. The VPI policies include automobile club membership benefits, including automobile rental reimbursement for mechanical breakdown, legal expenses, bail bond premium reimbursement, and towing. Therefore, the VPI policies are not permitted to be financed under § 627.8405(1), Florida Statutes. Some of these coverages under VPI are also exempt from the Florida Insurance Code pursuant to § 624.124, Florida Statutes, which makes them ineligible for premium finance.

D. In my experience as the Insurance Commissioner of the State of Florida, VPI is a product that is merely added to provide additional income to the agents and agencies marketing to consumers that generally want to only purchase the minimum automobile (PIP/PD) coverage required by Florida law. To make matters worse, this product (along with the minimum automobile PIP/PD coverage required by Florida law) is then financed through an insurance company related premium finance company at very high rates permitted under Florida premium finance law. While these interest rates are

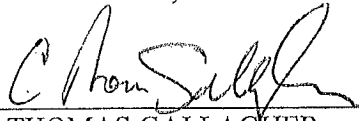
not usurious per se under Florida law, the use of this financing of a product that adds no real value, is unconscionable and illegal in the State of Florida.

E. It is my opinion that the sale of VPI with the PIP/PD mandatory automobile coverage appears to be a scam using a surplus lines insurer calling it "excess" insurance. The surplus lines carrier is being used in order to attempt to circumvent consumer protections afforded to insureds under Florida Statutes. If VPI's rates and forms would have been submitted to Department of Insurance when I was Insurance Commissioner, the VPI product would not have been approved. It is also my opinion that if VPI was submitted to the Florida Office of Insurance Regulation today, it still would not be approved. This opinion is based, in part, on the Second Affidavit of Lisa M. Robison, in which she testified that the Direct General Defendants retain 80% of the VPI premiums "as commissions and other consideration for the services provided under such agreements relating to VPI." I believe it is important to know the claims history of the VPI product because that would assist me in assessing the validity (or lack thereof) of this policy.

F. Certain Underwriters does not appear to be the actual insurer (risk taker) for the VPI product. My reading of the Binding Authority Agreements shows that Certain Underwriters does not accept any risk under the terms of the agreements, but are simply being used for the Lloyd's name and is merely a "fronting entity", therefore, giving the impression that a Lloyd's syndicate is the actual insurer (risk taker) of this product.

I declare under penalty of perjury under the laws of the United States of America and the State of Florida that the foregoing is true and correct.

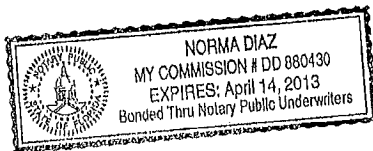
Executed on this 11th day of April, 2012 in Fort Lauderdale, Florida.

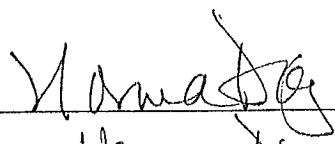

C. THOMAS GALLAGHER

**STATE OF FLORIDA
COUNTY OF BROWARD**

BEFORE ME, the undersigned authority, this 11th day of April, 2012, personally appeared **C. Thomas Gallagher**, who having been duly sworn, states that he has read the foregoing Affidavit and acknowledges same to be true. He is personally known to me.

[NOTARIAL SEAL]



Notary: 
Print Name: Norma Diaz

Notary Public, State of Florida

My commission expires: 4-14-13

B

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT
(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Finance and Tax Committee

BILL: CS/CS/SB 1894

INTRODUCER: Finance and Tax Committee, Judiciary Committee and Senator Bennett

SUBJECT: Surplus Lines Insurance

DATE: April 20, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Burgess	BI	Fav/1 amendment
2.	Treadwell	Maclure	JU	Fav/CS
3.	Johansen	McKee	FT	Fav/CS
4.			GA	
5.			WPSC	
6.				

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... ☒ Statement of Substantial Changes
B. AMENDMENTS..... ☐ Technical amendments were recommended
☐ Amendments were recommended
☐ Significant amendments were recommended

I. Summary:

Surplus lines insurance is the market of last resort for difficult to place commercial and personal lines risks in Florida.¹ Typically, surplus lines insurers write policies for unusual, high-risk situations that include hazardous materials transporters, commercial trucking enterprises, day care centers, older homes located in coastal areas, professional athletes, hospitals, expensive boats and cars, and medical malpractice. In order to place business with a surplus lines insurer, the surplus lines agent must make a "diligent effort" to place the policy with a Florida-authorized insurer, which is shown by having three written rejections of coverage from authorized insurers currently writing the type of insurance being sought.²

Historically, surplus lines insurers have not been subject to the insurance regulatory requirements in ch. 627, F.S.,³ as authorized insurers due to a specific exemption provision for surplus lines

¹ Surplus lines insurance is insurance coverage provided by an insurer that is not licensed in Florida, but is allowed to do business in the state because the particular coverage offered is not available from Florida-licensed or authorized carriers. Surplus lines insurers are governed under the Surplus Lines Law (ss. 626.913-626.937, F.S.).

² Sections 626.914(4) and 626.916(1)(a), F.S.

³ Chapter 627, F.S., provides the regulatory requirements for authorized carriers under the Office of Insurance Regulation as to rates, forms, contracts, and other provisions. There are only a few provisions under ch. 627, F.S., that explicitly state that

under the chapter.⁴ Furthermore, the Office of Insurance Regulation (OIR) has never regulated surplus lines insurers as to rate, form, or other requirements under ch. 627, F.S.⁵ However, two recent rulings by the Florida Supreme Court and a federal appellate court have altered the manner in which surplus lines insurers have historically been regulated.⁶ Essentially, these rulings require that surplus lines policy forms must now be filed, reviewed, and approved by the OIR under part II of ch. 627, F.S.,⁷ which has never before been a requirement for these carriers.

The bill responds to these court decisions by clarifying that the form filing and other provisions of ch. 627, F.S., except where specifically stated, do not apply to surplus lines insurance.

However, the bill imposes certain requirements on surplus lines insurers, beginning October 1, 2009, which are similar to some of the provisions governing admitted insurers in ch. 627, F.S.

The bill:

- Requires surplus lines insurers to include on the face of the policy a statement that surplus lines insurers' policy rates and forms are not approved by any Florida regulatory agency;
- Specifies the payment types for surplus lines insurance contract premium and claims;
- Establishes procedures and time frames for certain disclosures by the surplus lines insurers to claimants regarding liability claims;
- Provides for an award of attorney's fees upon a judgment or decree by any Florida court in favor of any named or omnibus insured or named beneficiary; and
- Requires surplus lines insurers to print on the face of a policy a notice that the policy contains a separate deductible or a co-pay provision for hurricane or wind losses, which may result in high out-of-pocket expenses to the insured.

Excluding the new requirements under the bill which apply to policies issued on or after October 1, 2009, the legislation provides that the provisions of the bill will operate retroactively to October 1, 1988, the effective date of a law enacted in 1988 adding the surplus lines exemption to the statute.⁸ Thus, the bill exempts surplus lines insurance from the provisions of ch. 627, F.S., from October 1, 1988, to present.

This bill amends sections 624.913 and 626.924, Florida Statutes. This bill creates the following sections of the Florida Statutes: 626.9371, 626.9372, 626.9373, and 626.9374.

they are to be applied to surplus lines carriers, which include assessments, reporting requirements, and activities related to risk retention and purchasing groups.

⁴ Section 627.021(2), F.S.

⁵ See Amicus Curiae Brief by the Office of Insurance Regulation in *CNL Hotels & Resorts, Inc.*, filed September 12, 2008.

⁶ *Essex Insurance Company v. Zota*, 985 So. 2d 1036 (Fla. 2008) and *CNL Hotels & Resorts, Inc. v. Twin City Fire Insurance Company*, 291 F.Appx. 220, 2008 WL 3823898 (11th Cir. 2008).

⁷ The court decisions affect the applicability of the entire chapter to surplus lines insurance.

⁸ Chapter 88-166, Laws of Fla.

II. Present Situation:

Surplus Lines Insurance Coverage – Background

Insurance companies that transact insurance in Florida or that have offices located in the state are required to obtain a certificate of authority (COA) issued by the Office of Insurance Regulation (OIR) pursuant to s. 624.401, F.S. These companies, referred to as authorized or admitted insurers,⁹ are broadly regulated by the OIR under the Insurance Code as to reserves, surplus as to policyholders, solvency, rates and forms, market conduct, permissible investments, and affiliate relationships.¹⁰ Authorized insurers are also required to participate in a variety of government mandated insurance programs and pay assessments levied by state guaranty funds in the event of insurer insolvencies.¹¹

Surplus lines insurers are regulated by the state, but do not have to obtain a COA and are not required to adhere to the other requirements mentioned above. Surplus lines insurance is an alternative type of insurance coverage for consumers to buy property-liability insurance from unauthorized (non-admitted) insurers when consumers are unable to purchase the coverage they need from admitted insurers. Surplus lines insurance is coverage provided by a company that is not licensed in Florida, but is allowed to transact insurance in the state as an “eligible” insurer¹² under the surplus lines law (ss. 626.913-626.937, F.S.). Under this law, insurance may only be purchased from a surplus lines carrier if the necessary amount of coverage cannot be procured after a diligent effort to buy the coverage from authorized insurers.¹³ Rates charged by a surplus lines carrier must not be lower than the rate applicable and in use by the majority of the authorized insurers writing similar coverages on similar risks in Florida.¹⁴ Likewise, a surplus lines policy contract form must not be more favorable to the insured as to the coverage or rate offered by the majority of authorized carriers.¹⁵

The surplus lines law contains specific financial and other requirements that unauthorized insurers must comply with in order to become eligible surplus lines insurers and obtain approval by the OIR. For example, a surplus lines insurer must maintain a surplus as to policyholders of not less than \$15 million and have been licensed in its state or country of domicile for at least three years.¹⁶ These entities must also pay annual premium receipts tax of 5 percent, which is more than double the percentage for admitted carriers.¹⁷

⁹ An “authorized” or “admitted” insurer is one duly authorized by a COA to transact insurance in this state.

¹⁰ The Insurance Code consists of chs. 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.

¹¹ For example, Florida licensed direct writers of property and casualty insurance must be members of the Florida Insurance Guaranty Association, which handles the claims of insolvent insurers under part II of ch. 631, F.S., and insurers offering workers’ compensation coverage in Florida must be members of the Florida Workers’ Compensation Insurance Guaranty Association, which provides payment of covered claims for insurers that are declared insolvent under part V of ch. 631, F.S.

¹² An “eligible surplus lines insurer” as defined in s. 626.914(2), F.S., is an “unauthorized insurer” which has been made eligible by the Office of Insurance Regulation to issue insurance coverage under the surplus lines law.

¹³ See s. 626.914(4), F.S. A “diligent effort” is defined as seeking coverage from and being rejected by at least three authorized insurers that write the type of coverage being sought. The rejections must be documented.

¹⁴ Section 626.916(1)(b), F.S.

¹⁵ Section 626.916(1)(c), F.S.

¹⁶ Section 626.918, F.S.

¹⁷ Section 626.932, F.S.

Historically, surplus lines insurers have never been held subject to Florida's regulation of rates, forms, or other requirements under ch. 627, F.S., as are admitted insurers.¹⁸ This is true of the regulatory treatment of surplus lines insurers in other states across the country. The different regulatory treatment is due to the unique nature of surplus lines insurance because it covers consumer needs arising from emerging technologies, new business practices, or changing legal environments which require a quick response that is often difficult for admitted insurers to provide, according to representatives with the Florida Surplus Lines Office.

Florida ranks as the fourth largest state in terms of surplus lines business, behind only California, Texas, and New York. There are 165 surplus lines insurers writing insurance in Florida with over \$4 billion in written premiums during 2008.¹⁹ These insurers wrote over 700,000 Florida policies last year. The majority of surplus lines insurance written in Florida in 2008 was inland marine coverage (197,334 policies), commercial general liability (138,618 policies), and commercial property (104,343 policies). Surplus lines insurers wrote only a small fraction of homeowners policies (58,438) in 2008 as compared to the number of policies written by admitted carriers (6,034,918).²⁰ That same year, surplus lines carriers wrote 23,006 condominium unit owners policies, and 4,479 mobile homeowners policies.

Florida Surplus Lines Service Office and Surplus Lines Agents

In 1997, the Legislature created the Florida Surplus Lines Service Office (FSLSO), a non-profit association designed to act as a "self-regulating organization" to permit better access by consumers to approved surplus lines insurers.²¹ The FSLSO is governed by a nine-person board of governors and is required to perform its functions under a plan of operation approved by the OIR. The FSLSO:

- Receives, records, and reviews all surplus lines insurance policies;
- Maintains records of policies;
- Prepares and delivers to each surplus lines agent quarterly reports of each agent's business;
- Collects and remits the surplus lines tax; and
- Performs other activities as specified by statute.

There are 1,059 licensed surplus lines agents in Florida which are authorized to handle the placement of insurance coverages with surplus lines insurers and are deemed to be members of the FSLSO. These agents are required to report and file with the FSLSO a copy of, or information on, each surplus lines insurance policy, including the name of the insured and insurer, the policy number and its effective date, the policy's expiration date, the type of coverage, the premium, and other information.

¹⁸ See *Affidavits In Support of Intervenor-Plaintiff Essex Insurance Company's Amended Motion for Summary Judgment* by Steve Parton, Office of Insurance Regulation, General Counsel, and Belinda Miller, Office of Insurance Regulation, Deputy Commissioner for Property and Casualty Insurance, filed in *Howard v. Choice Hotels International, Inc.*, Case No. CA06-680-55 (Fla. 7th Cir. Tr. Ct. 2008).

¹⁹ Florida Surplus Lines Service Office.

²⁰ These are HO-3 policies.

²¹ Chapter 97-196, Laws of Fla. Section 626.921, F.S.

Surplus Lines Litigation Relating to the Applicability of Chapter 627, F.S.

The insurance regulatory requirements under ch. 627, F.S., cover a broad range of subjects which include: filing and approval of rates and forms by the OIR, insurance contract coverage provisions, reporting requirements, application of attorney's fees, licensure of rating and other organizations, and specific requirements for different lines or types of insurance.²² Specifically, part I of the chapter governs the filing and approval of insurer rates by the OIR and part II governs, in part, the filing and approval by the OIR of insurer policy forms.²³

Authorized carriers must comply with the rate, form, and other requirements outlined above in ch. 627, F.S. However, surplus lines insurers historically have never been required by the OIR to comply with rate, form, or other provisions under ch. 627, F.S., because these insurers are governed by the surplus lines law²⁴ and because the OIR considered the surplus lines insurers to be specifically exempt under ch. 627, F.S., as explained below. Representatives with the OIR assert that the specific rate and form filing requirements under parts I and II of ch. 627, F.S., which apply to authorized insurers holding certificates of authority issued by the OIR, do not apply to surplus lines insurers.²⁵ These representatives state that one of the purposes of the Surplus Lines law (s. 626.913(2), F.S.), is:

to protect such authorized insurers, who under the laws of this state must meet certain standards as to policy forms and rates, from unwarranted competition by unauthorized insurers who, in the absence of *this* law, would not be subject to similar requirements.

The OIR representatives state that the agency has not regulated surplus lines insurers to the same extent as the admitted market due to the exemption specified under s. 627.021(2), F.S., which states: "This chapter [ch. 627, F.S.] does *not apply* to: . . . (e) Surplus lines insurance placed under the provisions of ss. 626.913-626.937."²⁶ The OIR's exclusion of surplus lines insurance from insurance regulatory laws that apply to authorized insurers is consistent with surplus lines laws throughout the country, which have traditionally not subjected surplus lines insurers to the same regulations as authorized insurers.²⁷ However, the historical regulatory status of surplus lines insurance has been brought into question by two recent court decisions interpreting the surplus lines exclusion provision.²⁸

²² The lines or types of insurance include but are not limited to: life and health insurance, Medicare supplement insurance, property and motor vehicle insurance and title insurance.

²³ Under s. 627.410, F.S., every insurance policy form must be filed 30 days in advance of use, and after the expiration of the 30 days, the form is deemed approved unless, prior to that time, the form has been approved or disapproved by the OIR.

²⁴ See ss. 626.913-626.937, F.S.

²⁵ See affidavits by Steve Parton, OIR General Counsel, and Belinda Miller, OIR Deputy Commissioner for Property and Casualty Insurance.

²⁶ This provision was enacted by the Legislature in 1988 (Ch. 88-166, Laws of Fla.), with an effective date of October 1, 1988.

²⁷ Edwards Angell Palmer & Dodge, LLP, *Excess and Surplus Lines Laws in the United States*, John P. Dearie, Jr. – Editor, January 2008.

²⁸ *Essex Insurance Co. v. Zota*, 985 So. 2d 1036 (Fla. 2008) and *CNL Hotels & Resorts, Inc. v. Twin City Fire Insurance Co.*, 2008 WL 3823898 (11th Cir. 2008). The *Essex* court ruled on a certified question from the U.S. 11th Circuit Court of Appeals. In *Essex*, the court found that two sections in part II of ch. 627, F.S., were applicable to surplus lines insurers (ss. 627.421 and 627.428, F.S.) because neither of these sections appears in part I of ch. 627, F.S. The primary issue in the case involved an interpretation of Florida insurance law requiring the delivery of a copy of a surplus lines insurance policy to

In *Essex Insurance Co.*, the Florida Supreme Court ruled that the surplus lines exclusion provision in s. 627.021(2), F.S., only exempted this type of insurance from the rate filing regulations under part I of ch. 627, F.S., and not the remaining insurance regulations in ch. 627, F.S. In its opinion, the Court stated that the word “chapter” in s. 627.021(2), F.S., was intended by the Legislature to mean “part” as in part I of ch. 627, F.S., with the result that sections of ch. 627, F.S., that were argued as inapplicable to surplus lines carriers separately regulated by ch. 626, F.S., were found applicable to such carriers.²⁹ The *Essex* court basically altered the applicability of the surplus lines insurance exclusionary provision under s. 627.021, F.S., by making surplus lines insurance subject to parts II - XXI of ch. 627, F.S. The Court based its reasoning on a prior Florida Supreme Court case, *National Corp. Venegolana v. Manauire*,³⁰ which, in analyzing s. 627.021(2), F.S., held that the statutory exclusion applied exclusively to part I of ch. 627, F.S., rather than ch. 627, F.S., in whole, and therefore the rest of that chapter should apply to surplus lines insurers.

In *CNL Hotels & Resorts, Inc. v. Twin City Fire Insurance Co.*, the U.S. Court of Appeals for the Eleventh Circuit was faced with an argument that the surplus lines insurance carrier (Twin City) was subject to the forms filing and approval provision of s. 627.410, F.S.,³¹ since that provision was contained in that “part” of ch. 627, F.S., that *Essex* found applicable to surplus lines carriers. The court relied upon the *Essex* decision in ruling that s. 627.410, F.S., which is in part II of ch. 627, F.S., applies to surplus lines insurers.³² The Eleventh Circuit held that “if a form is not filed with the Office, the form is void.” Consequently, it remanded the case to the trial court to determine whether the policy endorsement was void because it was not filed and approved by the OIR in accordance with s. 627.410, F.S.

There have been a number of cases filed in state and federal courts relating to the surplus lines exemption provision in s. 627.021(2), F.S., in the aftermath of the *Essex* and *CNL* rulings.³³ At

the policyholder (s. 627.421, F.S.). The Court held that delivery of the policy to the policyholder’s insurance broker was sufficient under Florida law and, thus, the surplus lines insurance company was not required to deliver a copy of the insurance policy directly to the policyholder. The Court also found that s. 627.428, F.S., (award of attorney’s fees statute) would apply to *Essex Insurance Co.* even though it was a surplus lines carrier, should its insureds prevail on coverage issues that were remanded for fact development to the lower court.

²⁹ Chapter 627, F.S., is entitled “Insurance Rates and Contracts” and consists of 21 parts. Part I covers rates and rating organizations. The operative statutory language considered by the *Essex* court reads:

627.021 Scope of this part.-

(1) This part of this chapter applies only to property, casualty, and surety insurances on subjects of insurance resident, located, or to be performed in this state.

(2) This chapter does not apply to:

...

(e) Surplus lines insurance placed under the provisions of ss. 626.913-626.937.

³⁰ *National Corp. Venegolana v. Manauire*, 511 So. 2d 970 (Fla. 1987). In *Manauire*, the Court addressed the question of whether s. 627.021(2)(c), F.S., excluded marine insurance from s. 627.7262, F.S., (part XI of ch. 627, F.S.) and held that the exclusionary provisions of s. 627.021(2), F.S., apply exclusively to part I of ch. 627, F.S.

³¹ Section 627.410, F.S., requires insurance companies to file insurance forms with the OIR and obtain approval of the forms from the OIR before the forms can be used by the insurer.

³² The Court held that the exemptions contained in s. 627.021, F.S., only apply to part I of ch. 627, F.S.

³³ The cases include: *Choice Hotels v. Howard*, Case No. CA06-680-55, filed in the 7th Circuit, St. Johns County, Florida; *GB, L.L.C.d/b/a Mamma Nunza v. Lloyds*, Case No. 08-013299 CACE 13, filed in the 17th Circuit, Broward County, Florida

issue in some of the cases is the applicability of the form filing requirements of s. 627.410, F.S., to surplus lines insurance. In many of these cases, plaintiffs, who are policyholders of the surplus lines insurance company defendant, are attempting to obtain insurance coverage by voiding either a provision in the insurance contract or an endorsement to the contract. The plaintiffs argue that the provision or endorsement was void and unenforceable because the surplus lines insurer did not file the policy or endorsement form with, or receive approval of the form from, the OIR. If these arguments prevail, coverage will be afforded where it was otherwise excluded under the terms of the insurance contract and where it was not anticipated in the pricing. Some surplus lines insurers argue that they face the prospect of avoidance of policy forms as these issues are litigated. As a result, there is little chance they will continue to provide coverage to Florida insureds.

Representatives from the OIR and the Florida Surplus Lines Service Office have filed amicus papers and affidavits in some pending cases, arguing that the OIR has never required surplus lines insurers to comply with the form filing requirements in part II of ch. 627, F.S., as required of admitted insurers. Further, the OIR has asserted that the agency cannot handle the volume of filings if thousands of surplus lines policies had to be filed for pre-approval.

Some attorneys with the trial bar assert that the provisions in ch. 627, F.S., are designed to protect the public and that there should be ramifications to the surplus lines insurer for noncompliance with these statutory requirements. They point out that the court decisions are correct in that surplus lines carriers are similar to admitted carriers and that consumers deserve the protections and agency scrutiny afforded under ch. 627, F.S.

III. Effect of Proposed Changes:

The bill includes a provision declaring that surplus lines insurers are exempt from any provision in ch. 627, F.S., unless expressly provided otherwise in that chapter. In addition, the bill includes several provisions that impose requirements on surplus line insurers, which are similar to laws governing admitted insurers in ch. 627, F.S. Following is a section-by-section analysis of the bill:

Exclusion of Surplus Lines Insurers from Chapter 627, F.S.

Section 1. The bill amends s. 626.913, F.S., the provision under the surplus lines law relating to the "legislative purpose" of the law. The bill provides that, except as may be specifically stated to apply to surplus lines insurers, the provisions of ch. 627, F.S., do not apply to surplus lines insurance authorized under the surplus lines law.

This provision appears to be in response to the recent court decisions that surplus lines insurers must comply with the other provisions of ch. 627, which include filings with the Office of Insurance Regulation (OIR), as well as review and approval by OIR. In effect, under the bill, unless a provision in ch. 627, F.S., expressly provides that it applies to surplus lines insurance, this type of insurance is exempt from those provisions. Although the bill includes the exemption

language in ch. 626, F.S., the surplus lines exemption language subject of the court decisions regarding the applicability of ch. 627, F.S., to surplus lines insurers remains unaltered in ch. 627, F.S.

Policy Information

Section 2. This section amends s. 626.924, F.S., the statute governing what information is required to be printed on the face of the surplus lines policy and on any certificate, cover note, or other confirmation of the insurance. The bill provides that surplus lines policies issued on or after October 1, 2009, must have the following statement stamped or printed on the face of the policy in at least 14-point, boldface type:

SURPLUS LINES INSURERS' POLICY RATES AND FORMS ARE NOT
APPROVED BY ANY FLORIDA REGULATORY AGENCY.

Payment of Premiums and Claims

Section 3. This section creates s. 626.9371, F.S., which relates to payment of premiums and claims for surplus lines policies. The bill specifies that the premiums for surplus lines insurance contracts issued on or after October 1, 2009, must be paid in cash consisting of coins, currency, checks, or money orders or by using a debit card, credit card, automatic electronic funds transfer, or payroll deduction plan.

Similarly, all payments of claims made on or after October 1, 2009, in Florida must be made in cash consisting of coins, currency, checks, drafts, or money orders. However, the bill provides that if payment is made by check or draft, the payment must comply with the standards for cash items adopted by the Federal Reserve System to facilitate the sorting, routing, and mechanized processing of such items. Payment may also be made by debit card or any other form of electronic transfer if authorized by the recipient or the recipient's representative. If fees or costs are charged against the recipient or the recipient's representative, the insurer must disclose this to the recipient at the time of written authorization. However, the written authorization may be waived by the recipient if the insurer verifies the identity of the insured or the insured's recipient and does not charge a fee for the transaction. The bill provides that the insurer remains liable if funds are misdirected.

The provisions in section 3 of the bill are almost identical to the payment of premiums and claims provisions applicable to admitted insurers in ch. 627, F.S. However, the bill does not include similar provisions from s. 627.4035(1), F.S., that allow for the option of payment plans establishing quarterly and semiannual payment of premiums for certain policyholders or provisions exempting certain agreements and loans from these provisions.

Disclosure Requirements

Section 4. This section creates s. 626.9372, F.S., which relates to required disclosure statements of certain information in liability claims. The bill provides that each surplus lines insurer that provides or may provide liability insurance coverage to pay all or a portion of any claim under a policy issued on or after October 1, 2009, must provide, within 30 days after the written request

of the claimant, a statement of the corporate officer or the insurer's claims manager or superintendent the following information regarding each known policy of insurance, including excess or umbrella insurance:

- The name of the insurer;
- The name of each insured;
- The limits of the liability coverage;
- A statement of any policy or coverage defense that such insurer reasonably believes is available to the insurer at the time of filing the statement; and
- A copy of the policy.

In addition to this requirement, the insured or his or her insurance agent must disclose the name and coverage of each known insurer to the claimant upon request. In addition, the insured or agent must forward the request for information to all affected insurers. The insurer has 30 days from receipt of the request to comply with the request for information. If the insurer discovers facts requiring an amendment to the information provided, it must provide an amended statement within 30 days of discovery of those facts.

These provisions differ slightly from the disclosures required of admitted insurers under s. 627.4137(1), F.S. Under ch. 627, F.S., admitted insurers are required to submit the same information to a claimant. However, the statement must be made under oath. While surplus lines insurers are afforded 30 days to provide amended statements to claimants under the bill, admitted insurers must immediately provide an amended statement upon discovery of facts necessitating an amendment.

Attorney's Fees

Section 5. This section creates s. 626.9373, F.S., to provide for an award of attorney's fees against insurers in certain cases. Under the bill, if a state court or appellate court awards a judgment or decree against a surplus lines insurer and in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer on or after October 1, 2009, the trial or appellate court is authorized to award reasonable attorney's fees. If attorney's fees are awarded, the award must be included in the judgment or decree rendered in the case.

Although the attorney's fee provision governing admitted insurers in s. 627.428, F.S., includes an exclusion of attorney's fee awards in certain life insurance policies and annuity contracts, which are not applicable in the surplus lines context, the attorney's fee provision in the bill is virtually identical to the provision in ch. 627, F.S.

Deductibles and Coinsurance

Section 6. This section creates s. 626.9374, F.S., to provide for notices to insureds regarding certain liability assumed with deductibles and coinsurance. For instance, the bill provides that a surplus lines personal lines residential property insurance policy issued on or after October 1, 2009, that contains a separate hurricane or wind deductible must place the following language in 14-point font on the face of the policy:

THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR HURRICANE OR WIND LOSSES, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU.

Similarly, any surplus lines personal lines residential property insurance policy issued on or after October 1, 2009, containing a coinsurance provision applicable to hurricane or wind losses must include the following language on the face of the policy in 14-point font:

THIS POLICY CONTAINS A CO-PAY PROVISION THAT MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU.

Although these provisions are almost identical³⁴ to the provisions included in s. 627.701(4), F.S., relating to admitted insurers, ch. 627, F.S., provides some additional requirements for insurers. For example, existing law requires admitted insurers to display the actual dollar value of the hurricane deductible on the declarations page of the policy and on the renewal declarations page for personal lines residential property insurance policies.³⁵ For any personal lines residential property insurance policy containing an inflation guard rider, the insurer must notify the policy holder of the possibility that the hurricane deductible may be higher than indicated when loss occurs due to application of the inflation guard rider.³⁶ Finally, other detailed provisions governing hurricane deductibles for policies covering a risk valued at less than \$500,000 are included in ch. 627, F.S.³⁷

Severability Clause

Section 7. This section provides that if any provision of the act or the application of the act to any person or circumstance is held invalid, the invalidity will not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and that the provisions of the act are severable.

Effective Date

Section 8. This section provides that the act shall take effect upon becoming a law. The bill also provides that Section 1 of the act will operate retroactively to October 1, 1988. This is the operative date because it is the effective date of the law enacted in 1988 adding the surplus lines exemption to s. 627.021(2), F.S., to provide that that ch. 627, F.S., does not apply to surplus lines insurance.

³⁴ The bill provides that these provisions must appear on the face of the policy in 14-point font. Section 627.701(4)(a), F.S., provides that this notice must appear on the face of the policy in 18-point font. Additionally, ch. 627, F.S., references "hurricane losses," while the bill references "hurricane *or* wind losses."

³⁵ Section 627.701(4)(b), F.S.

³⁶ Section 627.701(4)(c), F.S.

³⁷ Section 627.701(4)(d), F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:**Severability Clause**

The bill contains a severability clause. Generally, courts are under a duty to sever unconstitutional provisions from a law and allow the rest of the law to stand if that is possible. Courts must do so regardless of the lack of a severability clause in law. This duty springs from the doctrine of separation of powers.³⁸

Retroactive Application

The bill provides that Section 1 will operate retroactively to October 1, 1988. This is the effective date of the law enacted in 1988 adding the surplus lines exemption to s. 627.021(2), F.S., to provide that the ch. 627, F.S., does not apply to surplus lines insurance. In general, courts will refuse to apply a statute retroactively if it affects substantive rights, liabilities, and duties,³⁹ impairs vested rights, creates new obligations, or imposes new penalties.⁴⁰ However, statutes which do not alter contractual or vested rights, but relate only to remedies or procedure, can be applied retroactively.⁴¹

Florida courts have recognized that a statute may be retroactively applied if:

- There is clear evidence that the Legislature intended to apply the statute retroactively; and
- Retroactive application is constitutionally permissible.⁴²

The bill clearly meets the first prong because section 3 of the bill states explicitly that it will operate retroactively to October 1, 1988.

³⁸ *Boyd v. Green*, 355 So. 2d 789 (Fla. 1978). See FLA. CONST. s. 3, art. II.

³⁹ *Progressive Express Ins. Co. v. Menendez*, 979 So. 2d 324 (Fla. 3d DCA 2008).

⁴⁰ *Romine v. Florida Birth Related Neurological Injury Compensation Ass'n*, 842 So. 2d 148, 153 (Fla. 5th DCA 2003).

⁴¹ *Menendez*, 979 So. 2d at 330.

⁴² *Metropolitan Dade County v. Chase Fed. Housing Corp.*, 737 So. 2d 494 (Fla. 1999); *Promontory Enterprises, Inc. v. Southern Engineering & Contracting, Inc.*, 864 So. 2d 479 (Fla. 5th DCA. 2004).

In determining whether retroactive application is constitutional, courts have generally held that due process considerations prevent the retroactive abolition of vested rights.⁴³ This is not an absolute rule, however, because the courts have identified factors that may be considered in determining whether to allow retroactivity. In one case, the Supreme Court weighed three factors in considering the validity of retroactivity:

- The strength of the public interest served by the statute;
- The extent to which the right affected is abrogated; and
- The nature of the right affected.⁴⁴

As a further consideration, the Court has ruled that when “an amendment to a statute is enacted soon after controversies as to the interpretation of the original act arise, a court may consider that amendment as a legislative interpretation of the original law and not as a substantive change thereof.”⁴⁵ There are numerous examples wherein the Court has rejected retroactivity⁴⁶ and has approved retroactivity.⁴⁷

A court may approve retroactive application of the bill to October 1, 1988, if it determines that the bill only augments current surplus lines insurance procedure. However, if the court were to determine that the bill does, in some way, alter substantive rights, it may approve the retroactive application if it determines that the bill is in response to the Florida Supreme Court’s recent interpretations that surplus lines insurers are subject to most of the provisions of ch. 627, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Within the past year, courts have held that surplus lines insurers are subject to all of the provisions of ch. 627, F.S., except for part I, the rating law. Surplus lines insurers will benefit under the bill’s provisions because they will not have to comply with the non-rating portions of ch. 627, F.S. (except where specifically stated), because the bill will restore the regulatory status of surplus lines insurance that was applied before the court decisions. To that extent, the bill represents a positive fiscal impact for these insurers by relieving them from costs they would face in the aftermath of the judicial rulings.

⁴³ *State Dept. of Transportation v. Knowles*, 402 So. 2d 1155 (Fla. 1981).

⁴⁴ *Id.*

⁴⁵ *Lowry v. Parole and Probation Comm.*, 473 So. 2d 1248 (Fla. 1985).

⁴⁶ *State Dept. of Transportation v. Knowles*, 402 So. 2d 1155 (Fla. 1981); *Rupp v. Bryant*, 417 So. 2d 658 (Fla. 1982); *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995); *Kaiser v. Kolb*, 543 So. 2d 732 (Fla. 1989).

⁴⁷ *Dept. of Agricultural Services v. Bonanno*, 568 So. 2d 24 (Fla. 1990); *Metropolitan Dade Co. v. Chase Federal Housing Corp.* 737 So. 2d 494 (Fla. 1999); *Orlando v. Desjardins*, 493 So. 2d 1027 (Fla. 1986); *Lakeland v. Catinella*, 129 So. 2d 133 (Fla. 1961).

However, costs will be incurred by surplus lines insurers to comply with some of the provisions of the bill, such as the requirement to include certain statements on the face of surplus lines policies. Additionally, surplus lines insurers that unlawfully deny claims may be subject to an award of attorney's fees if an insured is successful in a suit against the surplus lines insurer.

C. Government Sector Impact:

Under the bill, the Office of Insurance Regulation (OIR) will not be required to review and approve form filings and adhere to the other regulatory requirements under ch. 627, F.S., for surplus lines insurers. The bill represents a positive fiscal impact for the OIR by relieving them from costs associated with surplus lines form filing reviews and other requirements the agency would face in the aftermath of the judicial rulings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Finance and Tax on April 20, 2009:

The committee substitute narrows the title from an act relating to “insurance” to an act relating to “surplus lines insurers.”

CS by Judiciary on April 1, 2009:

The committee substitute:

- Requires surplus lines insurers to include on the face of the policy a statement that surplus lines insurers' policy rates and forms are not approved by any Florida regulatory agency;
- Specifies the payment types for surplus lines insurance contract premiums and claims;
- Establishes procedures and time frames for certain disclosure statements to claimants by the surplus lines insurer regarding liability claims;
- Requires surplus lines insurers to provide amended statements to claimants within 30 days of the discovery of certain information necessitating an amended statement;
- Provides for an award of attorney's fees upon a judgment or decree by any Florida court or appellate court in favor of any named or omnibus insured or named beneficiary;

- Requires surplus lines insurers to print on the face of a policy a notice that the policy contains a separate deductible or a co-pay provision for hurricane or wind losses, which may result in high out-of-pocket expenses to the insured; and
- Clarifies that the bill only applies retroactively to Section 1 of the bill, which excludes surplus lines insurers from provisions of ch. 627, F.S., while the remaining sections will take effect upon becoming law.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
