

ELEVENTH CIRCUIT COURT OF APPEALS CASE NO. 16-16585

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

RICHARD L. FOWLER, etc.,
et al.,
Appellants, Plaintiffs,

v.

11th Circuit No.: 16-16585-B
Lower Court Case No.:
S.D. Fla. No. 1:15-cv-24542-JG

CALIBER HOME LOANS, INC.,
etc., et al.,
Appellees, Defendants.

_____ /

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Brief of Amicus Curiae* UNITED POLICYHOLDERS in Support of
Reversal of the Order of Dismissal of the Plaintiffs' Claims With Prejudice
Because of the Filed Rate Doctrine

**All parties have consented to amicus curiae filing either by stating their
express consent or by stating that they have no objection.*

Respectfully submitted,
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Eleventh Circuit Court of Appeals Docket No. 16-16585
Richard Fowler, etc., et al v. Caliber Home Loans, Inc., etc., et al.

CERTIFICATE OF INTERESTED PERSONS
AND
CORPORATE DISCLOSURE STATEMENT
in compliance with FRAP 26.1, and Eleventh Circuit Rules 26.1-1, 26.1-2
and 26.1-3

The amicus files and serves this its Certificate of Interested persons pursuant to the Rules of this Honorable Court and the Federal Rules of Appellate Procedure:

United Policyholders, Inc.; and

Dennis J. Wall, Esquire.

This CIP is filed in accordance with applicable law. In particular, Eleventh Circuit Rule 31.1-2 appears to require amicus curiae to certify to completeness of CIPs filed in the cause, even as amicus adds names such as have been added here, above. In addition, the parties have previously filed their own Certificates of Interested Persons. For the sake of completeness and for ease of reference, the parties' Certificates of Interested Persons are reproduced below. In doing so, the amicus can truthfully represent that the following Certificates have been filed by the parties in this appeal.

The Appellants have filed the following Certificate of Interested Persons in this Honorable Court:

Plaintiffs-Appellants' ... Certificate of Interested Persons, which, in accordance with 11th Circuit Rule 26.1-1, includes the trial judge and all attorneys, associations or persons, firms, partnerships, and corporations known to have an interest in the outcome of this review:

1. American Security Insurance Company
2. Archie Lamb & Associates
3. Assurant, Inc. (AIZ)
4. Burt, Franklin G.
5. Bushman, Howard M.
6. Caliber Home Loans, Inc.
7. Carlton Fields Jordan Burt, P.A.
8. Crompton, Randall Seth
9. Edenfield, Nathaniel Mark
10. Engel, Sarah
11. Fowler, Richard L.

12. Giventhal, Alisa A.
13. Goodman, Jonathan
14. Greer, Alan Graham
15. Harke Clasby & Bushman, LLP
16. Harke, Lance A.
17. Holland, Eric D.
18. Holland Groves Schneller & Stolze
19. Jhavbala, Farrokh
20. Kamka, Mary Kate
21. Keller, Glenda
22. Kemp, Erik
23. Kozyak Tropin & Throckmorton, LLP
24. Lamb, Archie Cleveland Jr.
25. Moskowitz, Adam M.
26. Neary, Robert J.
27. Perryman, Brian P.
28. Podhurst, Aaron S.
29. Podhurst Orseck, P.A.

30. Prieto, Peter
31. Richman Greer, P.A.
32. Ronzetti, Thomas A. Tucker
33. Rosenthal, Stephen F.
34. Severson & Werson
35. Sullivan, John B.
36. Sullivan, Rachel
37. Weinshall, Matthew P.

The appellee, American Security Insurance Company ("ASIC"), filed the following enumeration of additional names:

Pursuant to Fed. R. App. P. 26.1 and 11th Cir. R. 26.1-1, defendant-appellee American Security Insurance Company ("American Security") files this Certificate of Interested Persons and Corporate Disclosure Statement to add interested persons and entities omitted from movants-appellants' Certificate of Interested Persons.

American Security discloses that the following additional persons and entities have an interest in the outcome of this appeal:

ABI International

ABIG Holding de Espana, S.L.

ALOC Holdings ULC

American Bankers General Agency, Inc.

American Bankers Insurance Company of Florida

American Bankers Insurance Group, Inc.

American Bankers Life Assurance Company of Florida

American Bankers Management Company, Inc.

American Memorial Life Insurance Company

Assurant Argentina Compania de Seguros Sociedad

Anonima Assurant Chile Compania de Seguros Generales

S.A. Assurant Co. Ltd.

Assurant Consulting Company Limited

Assurant Danos Mexico S.A. Assurant Deutschland GmbH Assurant Direct Limited

Assurant Direta Corretora de Seguros Ltda

Assurant General Insurance Limited

Assurant Group, Limited

Assurant Holding Mexico, S. de R.L. de C.V.

Assurant Holdings France SAS

Assurant Intermediary Limited Assurant

International Division Limited Assurant

Investment Management LLC

Assurant Italia Agenzia di Assicurazioni s.r.l.

Assurant Life Limited

Assurant Life of Canada Assurant

New Ventures, Inc. Assurant

Payment Services, Inc.

Assurant Reinsurance of Turks & Caicos, Ltd.

Assurant Seguradura S.A.

Assurant Service Protection, Inc.

Assurant Services Argentina, S.A.

Assurant Services Canada Inc.

Assurant Services de Chile, SpA

Assurant Services Italia s.r.l.

Assurant Services Korea Limited

Assurant Services Limited

Assurant Services, LLC

Assurant Services of Puerto Rico, Inc.

Assurant Services (UK) Limited

Assurant Servicios de Mexico, S.A. de CV

Assurant Servicios Ltda.

Assurant Solutions Assistance B.V.

Assurant Solutions Comercio e Servicios de Equipamentos Electronicos Ltda.

Assurant Solutions Holding Puerto Rico, Inc.

Assurant Solutions Spain, S.A.

Assurant Vida Mexico S.A. Axios

Valuation Solutions, LLC

Bankers Atlantic Reinsurance Company

Blue Bananas, LLC

Broadtech, LLC

Caribbean American Life Assurance Company

Caribbean American Property Insurance Company

Chilton, Jan T.

Coast to Coast Dealer Services Inc.

Consumer Assist Network Association, Inc.

Cooperatieve Assurant Netherlands U.A.

CWI Corporate

CWI Distribution CWI

Group

CWork Financial Management LLC CWork

Solutions, LP

Digital Services (UK) Ltd.

eMortgage Logic, LLC Family

Considerations, Inc.

FamilySide, Inc.

FAS-Nationstar, LLC

FAS-OWB Utilities, LLC

FAS-Tenant Access Utilities, LLC

Federal Warranty Service Corp.

Field Asset Services, LLC

Florida Office Corp.

GP Legacy Place, Inc.

Guardian Travel, Inc.

Insureco Agency & Insurance Services, Inc.

Insureco, Inc.

Interfinancial Inc.

I.Q. Data International, Inc.

John Alden Life Insurance Company

Lifestyle Services Group Ltd.

LSG Espana Ltd. LSG

Insurance Merten, W.

Glenn MobileServ 5

Ltd. MS Diversified Corp.

National Insurance Agency

National Insurance Institute, LLC

9167-1990 Quebec Inc.

Protection Holding Cayman

Reliable Lloyds Insurance Company

Shipsurance Insurance Services, Inc.

Signal Financial Management LLC

Signal GP LLC

Signal Holdings LLC

Signal Northwest LLC

Solutions Cayman

Solutions Holdings

STAMS Holding Ltd.

STAMS Ltd.

Standard Guaranty Insurance Company

StreetLinks, LLC

Sureway, Inc.

Telecom Re, Inc.

The Signal LP

Time Insurance Company

Tracksure Insurance Agency, Inc.

TS Holdings, Inc.

Union Security Insurance Company

Union Security Life Insurance Company of New York

United Service Protection Corp.

United Service Protection, Inc.

Voyager Group, Inc.

Voyager Indemnity Insurance Company

Voyager Service Warranties, Inc.

WePurchit.com LLC

Yambo-Gonzalez, Yvonne

The appellee, Caliber Homes, Inc., also filed an additional list:

Pursuant to Fed. R. App. P. 26.1 and 11th Cir. R. 26.1-1, defendant-appellee Caliber Home Loans, Inc. submits this Certificate of Interested Persons and Corporate Disclosure Statement to add interested entities omitted from appellants' and defendant-appellee American Security Insurance Company's Certificates of Interested Persons. Caliber discloses that the following additional entities have an interest in the outcome of this appeal:

LSF6 Service Operations, LLC

Caliber Real Estate Services, LLC

Summit Trustee Services, LLC

Vericrest Agency Funding Depositor, LLC

Vericrest Servicer Advance Funding Depositor, LLC

Vericrest Financial Advance Trust 2012-ADV1A

Vericrest Financial Advance Trust 2010-ADV1

AMICUS CORPORATE DISCLOSURE STATEMENT

UP does not have a parent corporation and there is no publicly held corporation that owns 10% or more of its stock.

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The filed rate doctrine does not apply

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A. The Florida Office of Insurance Regulation, which 4

is the Florida Insurance Commissioner, does not approve

filed insurance rates which contain unauthorized charges

in force-placed insurance premiums, including but not limited to

unauthorized "commissions" and kickbacks.

B. American Security Company (ASIC) is perhaps the single 8

largest provider of lender force-placed insurance

in the United States. It is the force-placed insurance company

involved in this case. ASIC gave up any filed rate doctrine defense in

Florida when ASIC consented not to include the unauthorized

"commissions" and "incentive payments" on which the plaintiffs have

based their claims against the defendants in this case. The claims of

the Pennsylvania plaintiff are not barred by the filed rate doctrine,

either. As a result the District Court's order of dismissal with

prejudice must be reversed and this cause remanded.

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**STATEMENT OF AMICUS IDENTITY, INTEREST,
AUTHORITY TO FILE, and UNANIMOUS CONSENT/NO OBJECTION**

**Statement of Amicus Identity, Interest, and Source of Authority to File:
UNITED POLICYHOLDERS:**

United Policyholders, ("UP") is a non-profit 501(c) (3) organization founded in 1991 in the aftermath of a large firestorm that resulted in many insurance claims. UP assists and informs disaster victims and individual and commercial policyholders with regard to every type of insurance product throughout the United States including Florida following Hurricane Andrew in 1992. State insurance regulators including the Florida Office of Insurance Regulation and the National Association of Insurance Commissioners, plus the Federal Insurance Office and academics and journalists throughout the U.S., routinely seek UP's input. To date UP has filed more than 400 amicus briefs in both state and federal courts, including many 11th Circuit [Florida] cases,¹ and its amicus briefs have been cited by many courts including the United States Supreme Court.

The Defendant-Appellee ASIC and the district court footnoted citations to the Florida Office of Insurance Regulation's website. (Doc. 23, ASIC Motion to

¹E.g., *Maplewood Partners v. Indian Harbor Ins. Co.*, 654 F. App'x 466 (11th Cir. 2016); *Lemy v. Direct General Finance Company* (Case No. 12-14794-FF, 2014); and *Amelia Island Co. v. Amerisure Ins. Co.* (Case No. 10-10960G, 2010).

Dismiss in *Fowler*, at 7 n.2; *Fowler* decision of U.S. Magistrate Judge herein appealed, in *Fowler v. Caliber Home Loans*, No. 15-24542-CIV-GOODMAN, 2016 WL 476138, at *12 n. 14 (S.D. Fla. Sept. 13, 2016), *appeal docketed*, No. 16-16585 (11th Cir. Oct. 13, 2016)), and ASIC advised this Court at page 25, footnote 4 in ASIC's brief in *Patel v. Specialized Loan Servicing* (11th Cir. No. 16-12100), that the Florida O.I.R. approved ASIC's rates for the insurance that was force-placed by the lender there, which are the same rates here. The filed rate doctrine cannot apply in Florida because the O.I.R. specifically prohibited kickbacks and other unauthorized charges from being included in lender force-placed insurance rate filings in Florida. In re: *American Security Insurance Company*, No. 14-141841-13, Consent Order (Florida O.I.R. October 7, 2013), accessible online at <http://www.floir.com/siteDocuments/AmericanSecurity141841-13-CO.pdf> (last accessed on Saturday, February 18, 2017). This Court and all parties would benefit from addressing the rulings of the regulatory agency charged with approving and reviewing filed insurance rates, the Florida Office of Insurance Regulation. The parties unanimously either consent or do not object to amicus herein. UP respectfully supports Appellants' request that this Honorable Court reverse the district court's order adopting the filed rate doctrine to bar LFPI claims.

STATEMENT REGARDING PREPARATION OF AMICUS BRIEF

The undersigned has authored this brief in whole. No party has contributed money to fund this brief and the undersigned has prepared this brief *pro bono*.

STATEMENT OF THE ISSUE ON APPEAL

WHETHER THE FILED RATE DOCTRINE BARS THE CLAIMS ALLEGED BY RESIDENTIAL MORTGAGORS-BORROWERS SUCH AS THE PLAINTIFFS IN *Fowler* AND IN *Patel*, AGAINST THEIR MORTGAGE SERVICER AND ITS LENDER FORCE-PLACED INSURANCE COMPANY, ON ACCOUNT OF UNAUTHORIZED CHARGES BILLED BY THE SERVICERS TO THE PLAINTIFFS?

SUMMARY OF ARGUMENT

The filed rate doctrine does not apply to bar the plaintiffs' Florida-based claims either in *Fowler*, 11th Cir. No. 16-16585, or in *Patel*, 11th Cir. No. 16-12100, the case with which *Fowler* has become consolidated for oral argument. The most significant of many reasons is that the Florida regulator charged with approving or rejecting force-placed insurance premium rates, the Florida Office of Insurance Regulation (OIR), has rejected the unauthorized charges contained in the insurance rates of the force-placed insurance company. The plaintiffs in *Fowler* and in *Patel* do not complain that the lender force-placed insurance company included kickbacks and other alleged unauthorized charges in its insurance rates. Rather,

the plaintiffs complain that *their mortgage servicer* either added these unauthorized charges to their monthly mortgage payment without their knowledge or secretly took the money out of their mortgage escrow account to pay these charges. (Appellants' main brief makes clear that their claims against their servicer's lender force-placed insurance carrier are basically for allegedly "facilitating Caliber's breaches," and even for alleged conspiracy to do so. Appellants' Feb. 17, 2017 main brief herein, at p. 4.)

For another reason unique to this case, perhaps, the filed rate doctrine does not apply because the lender force-placed insurance provider, American Security Company (ASIC), freely and voluntarily agreed with the Florida regulator not to include the unauthorized charges in its LFPI rate filings. ASIC gave up any filed rate doctrine defense in Florida. The claims of the Pennsylvania plaintiff in *Fowler* are not barred by the filed rate doctrine, either.

The filed rate doctrine does not apply in Florida force-placed insurance cases. Both *Fowler* and *Patel* are appeals from a Rule 12(b)(6) order granting a motion to dismiss on the ground of the filed rate doctrine, an affirmative defense. This is not an appeal from summary judgment. If it were, a cluster of genuine issues of material fact would readily appear. It is respectfully submitted that the orders of dismissal must be reversed and both causes remanded.

ARGUMENT WITH REGARD TO THE ISSUE

The filed rate doctrine does not apply to bar the plaintiff's claims in this case.

A. The Florida Office of Insurance Regulation, which is the Florida Insurance Commissioner, does not approve filed insurance rates which contain unauthorized charges in force-placed insurance premiums, including but not limited to unauthorized "commissions" and kickbacks.

The Florida Office of Insurance Regulation (Florida Insurance Commissioner) has taken a proactive approach towards the examination of lender-placed insurance (LPI) or lender force-placed insurance (LFPI) business practices. The Office has entered into several consent orders with the largest writers of LFPI which govern the implementation of business practice reforms to help consumers, including that:

- 1) The insurer shall not pay commissions to a servicer, or a person or entity associated with a servicer on LPI policies obtained by that servicer.
- 2) The insurer shall not issue LPI on mortgaged property serviced by a servicer that is an affiliate of the insurer.
- 3) The insurer shall not reinsure with a captive insurer of any servicer.
- 4) The insurer shall not provide free or below-cost outsourced services to servicers or their affiliates (with certain exceptions to what is not included within outsourced services).
- 5) The insurer shall not make incentive payments, including but not limited to the payment of expenses, to servicers or their affiliates for the purpose of securing LPI business.

These agency rulings are reflected in the following Consent Orders, for example:

(1) In re: *American Modern Insurance Group, Inc.*, No. 174210-15-CO, Consent Order (Fla. O.I.R. Sept. 16, 2015), accessible online with its Exhibit "A," July 6, 2015 Florida Office of Insurance Regulation "Target Conduct Final Examination Rep't of American Modern Home Ins. Co.," et al., at http://www.floir.com/siteDocuments/American_Modern_Insurance_Group_Inc%20Consent_Order_174210-15-CO.pdf (last accessed on Saturday, February 18, 2017); (2) In re: *American Security Insurance Company*, No. 14-141841-13, Consent Order (Florida O.I.R. October 7, 2013), accessible online at <http://www.floir.com/siteDocuments/AmericanSecurity141841-13-CO.pdf> (last accessed on Saturday, February 18, 2017), and (3) In re: *Praetorian Insurance Co.*, No. 141851-13-CO, Consent Order (Fla. OIR April 12, 2014), at <http://www.floir.com/siteDocuments/Praetorian141851-13-CO.pdf> (last accessed on Saturday, February 18, 2017).

The costs excluded by the OIR's Orders from force-placed insurance rates are *never* approved by the Florida Insurance Commissioner. Such costs are simply never a part of the permissible "acquisition costs" in an insurance rate filing in Florida. See Fla. Stat. §§ 627.062 ("Rate standards"), and 627.403 ("Premium' defined") (addressing many things under the elaborate insurance rate filing

statutory scheme in Florida, including permissible "acquisition costs" of acquiring the right to issue the insurance in the first place).

With respect to ASIC in particular, ASIC submitted its commission contracts to the Florida OIR "[i]n support of its rate filing" in 2013. *See* ASIC v. State, Office of Ins. Reg., No. 2013-CA-001701, 2015 WL 10384359, at *1 (Fla. Cir. Ct., 2d Cir., Leon County, Aug. 13, 2015). When ASIC's filing was challenged by the Florida OIR, it was ASIC's burden of proof that the OIR should authorize the rates. *See* Fla. Stat. § 627.062(2)(g).

It is difficult at best to understand how an insurance carrier like ASIC could fail to meet its burden of proof in 2013 in the administrative proceeding in which the Florida OIR would not approve ASIC's force-placed insurance rate until ASIC excluded all unauthorized charges such as hidden "commissions" and "reinsurance" and the like, yet somehow meet its burden of "proof" on a motion to dismiss in a court in 2016 particularly when the filed rate doctrine reserves all questions of ratemaking to the regulator.

The plaintiffs' Florida-law claims in both *Fowler* and in *Patel* are predicated on the plaintiffs being charged for exactly such unauthorized "commissions" and "incentive payments." The filed rate doctrine is therefore no bar to the plaintiffs' claims against the defendants in either case. The District Court's rulings of

dismissal with prejudice in these cases must accordingly be reversed and both causes remanded.

ARGUMENT WITH REGARD TO THE ISSUE

The filed rate doctrine does not apply to bar the plaintiff's claims in *Fowler* or in *Patel*.

B. American Security Company (ASIC) gave up any filed rate doctrine defense in Florida when ASIC consented not to include the unauthorized "commissions" and "incentive payments" on which the plaintiffs have based their claims against the defendants in this case. The claims of the Pennsylvania plaintiff in *Fowler* are not barred by the filed rate doctrine, either. As a result the District Court's order of dismissal with prejudice must be reversed and this cause remanded.

The plaintiffs-appellants in *Fowler* and in *Patel* do not complain that a force-placed insurance company includes the price of kickbacks and other unapproved charges in the insurance company's insurance rate filings. The plaintiffs-appellants complain in part here pertinent *that their mortgage servicers* either hide these unauthorized charges in their monthly mortgage payments or secretly take their money out of escrow to pay these unauthorized charges. (*Fowler*, Doc. 1, Class Action Complaint, filed Dec. 10, 2015, *e.g.*, ¶¶ 25 & 34; *Patel*, Doc. 1, Class Action Complaint, also filed on Dec. 10, 2015, *e.g.*, ¶¶ 5, 26, & 35.) In both cases, the mortgage servicers' conduct is alleged to be an issue in common to all class

members. (*Fowler*, Doc. 1, ¶ 89 h, i, & j, at p. 27; *Patel*, Doc. 1, at ¶ 75 h, i, & j, at pp. 24-25.)

If only because ASIC filed a lawsuit to keep much of its rate filing a secret, we know from the case law that ASIC filed its commission contracts with the Florida OIR "[i]n support of [its] rate filing[.]" *See* *ASIC v. State, Office of Ins. Reg.*, No. 2013-CA-001701, 2015 WL 10384359, at *1 (Fla. Cir. Ct., 2d Cir., Leon County, Aug. 13, 2015). ASIC submitted 2,000 numbered pages which it contended, without opposition, should not be revealed to anyone other than the Florida OIR in ASIC's force-placed insurance rate proceeding, and the Florida Circuit Court Judge who adjudicated ASIC's secrecy lawsuit. In the words of the Florida Circuit Court Judge, the information ASIC submitted to the Florida OIR includes "ASIC's commission expenses," "*ASIC's assessment of proposed premiums based on the rates submitted for approval*" [emphasis added], "proprietary formula for imputed commission rate for specific ASIC clients," and "detailed information about ASIC's reinsurance contracts and specific terms and rates[.]" *See id.* in particular at *4 -*5. However, ASIC's request for a premium increase was not the end of the matter. The regulator had the final word, which is the very thing that the filed rate doctrine directs. The regulator considered all the documents ASIC filed including ASIC's secret documents.

Then, in direct response to ASIC's rate filing in 2013, the Florida Office of Insurance Regulation "raised concerns regarding ASIC's business practices as such practices relate to the payment of commissions to affiliates of Servicers, payment of qualified expenses directly to Servicers, and placement of quota share reinsurance with reinsurers that are captives of Servicers." Consent Order filed October 7, 2013, ¶ 3, at p. 2 of 8. ASIC denied that its conduct if any violated the Florida Insurance Code, but it agreed in the Consent Order to make certain "business practice reforms" regardless. ***ASIC agreed not to include unauthorized "commissions" it paid to lenders' mortgage servicers or "reinsurance premiums" it paid to lenders' subsidiaries in its force-placed insurance premium rate filings in Florida. Therefore those charges are not included in the force-placed insurance rates filed in Florida.***

When ASIC consented to the Order of the Florida Office of Insurance Regulation in 2013, ASIC consented to the following, among other things:

5. ASIC denies violation of the Florida Insurance Code with regards to the aforementioned business practices. Notwithstanding, ASIC agrees to the following business practice reforms for all LPI business in Florida:

A. ASIC shall not pay commissions to a Servicer, or a person or entity affiliated with a Servicer on LPI policies obtained by that Servicer;

* * *

C. ASIC shall not reinsure LPI policies with a captive insurer of any Servicer;

* * *

F. ASIC shall not make any incentive payments, including but not limited to the payment of expenses, to Servicers or their affiliates for the purpose of securing LPI business.

October 7, 2013 Consent Order with ASIC, ¶ 5, at pp. 2-3 of 8. *See also* [Dennis J. Wall, *Defenses to Claims Based on Lender Force-Placed Insurance Practices*, 51 Tort & Ins. L.J. 909, 922 & n.49 \(American Bar Association 2016\).](#)

In the orders of dismissal with prejudice that are here on appeal in both *Fowler* and in *Patel*, the District Courts did not cite to any of the Florida Insurance Commissioner's Orders including the OIR's Consent Order regarding ASIC's rate filing. The District Court in *Fowler* took notice, however, that the Third Circuit has rejected the filed rate doctrine in LFPI cases Pennsylvania residential real estate, as in *Fowler*.

The lower Courts instead elected to follow Second Circuit doctrine in the case of *Rothstein v. Balboa Ins. Co.*, 794 F.3d 256 (2d Cir. 2015) (reversing District Court's examination of filed ratemaking in the States involved in that alleged class action --Texas, New Hampshire, and New York -- by applying Second Circuit federal law without examining the laws of all of the States involved). In this case, the District Court simply was not free to impose federal law that the filed rate doctrine applied to bar the plaintiffs' claims, as the Second Circuit apparently did in *Rothstein*. *See generally* DENNIS J. WALL, LENDER FORCE-PLACED INSURANCE PRACTICES § 6.2, "*Filed Rate Doctrine*" (American Bar Association 2015). (Physical copies of this book have been donated and delivered to make it available in both the library of this Honorable Court in Atlanta, Georgia and in the Library of the U.S. Courts in Miami, Florida.)

Where as here the particular force-placed insurance carrier's approved rates do not include the kickbacks and commissions it allegedly pays to the lender or its servicer, the filed rate doctrine is not a part of the LFPI case. Reversal here will not require adjusting the force-placed insurance carrier's rates.

For all of these reasons, whether taken separately or together, ASIC has no standing to invoke the filed rate doctrine defense either in *Fowler* or in *Patel*; none of the other defendants has standing to invoke that defense, either; and the District Court's orders in *Fowler* and *Patel* must be reversed and both causes remanded.

CONCLUSION

For all of the foregoing reasons, whether taken separately or together, the filed rate doctrine does not apply to bar the plaintiffs' claims in *Fowler* or in *Patel*. The orders dismissing the plaintiffs' claims with prejudice must be reversed and both causes remanded for further proceedings.

CERTIFICATE OF COMPLIANCE WITH RULE 32(A), et al

The undersigned counsel for Amicus hereby certifies to the following compliance with the following rules, in accordance with applicable law including FRAP 32(g):

1. This amicus brief complies with the page limitation of Fed. R. App. P. 29(a)(5) because it contains no more than one-half the maximum length authorized

for the appellants' principal brief by the Federal Rules of Appellate Procedure, the Rules of the Eleventh Circuit Court of Appeals, and the Eleventh Circuit IOP.

2. This brief complies with the typeface requirements and the type style requirements of Fed. R. App. P. 32 because this brief has been prepared in a proportionally spaced typeface using Word 2013 with Times New Roman 14 point.

3. This brief complies with the applicable type-volume limitations found in law including FRAP 32, Eleventh Circuit Rule 32-4, and IOP--Cir. Rule 32, in that the foregoing Amicus Brief contains 2,644 words relying on the word count of the word-processing system used to prepare the document.

**CERTIFICATE OF SERVICE WITH UNANIMOUS CONSENT/NO OBJECTION TO
AMICUS**

I HEREBY CERTIFY that on Tuesday, February 21, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record, each of whom appears on the parties' Service List attachments in this case, which are all listed below, and that service of the foregoing document is being made this date either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notice of Electronic Filing; AND I HEREBY CERTIFY that I have contacted the Appellants' attorneys by telephone and E-Mail and they consent to amicus; and that I have contacted by telephone the attorneys for AMERICAN SECURITY INSURANCE CO. and CALIBER HOME LOANS, INC., and that they have no objection to amicus curiae.

s/ Dennis J. Wall

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