

## MEMORANDUM OF LAW

### A. The Delaware Liquidation and Injunction Order Does Not Mandate a Stay of the Current Proceedings

The Liquidation and Injunction Order of the Delaware Court does not and cannot bind this Court in the exercise of its federal jurisdiction. A state court lacks the power to enjoin a federal court action. *See Baker v. General Motors Corp.*, 522 U.S. 222, 236 n. 9 (1998) (“This court has held it impermissible for a state court to enjoin a party from proceeding in a federal court...”); *Donovan v. Dallas*, 377 U.S. 408, 412-412 (1964) (“state courts are completely without power to restrain federal court proceedings in in personam actions”). *See also General Atomic Co. V. Felter*, 434 U.S. 12, 17 (1977). Therefore, the Delaware Liquidation and Injunction Order has no effect in this federal action.

Defendant, in support of the stay, argues that the McCarran-Ferguson Act, 15 U.S.C. § 1011-1015, mandates that this court abstain from exercising jurisdiction in the current action in deference to the state insolvency proceedings. In support of this proposition, Defendant cites a case from the 4<sup>th</sup> Circuit, *Universal Marine Insurance Company, Ltd., v. Beacon Insurance Company, et al.*, 768 F.2d 84 (4<sup>th</sup> Cir. 1985). However, in a later case, *Gross v. Weingarten*, 217 F.3d 208 (4<sup>th</sup> Cir. 2000) the 4<sup>th</sup> Circuit Court clarified that the McCarran-Ferguson Act does not bar federal courts from exercising jurisdiction, pursuant to the federal diversity statute, 28 U.S.C. § 1332. *Id.* at 222 (“We are skeptical that Congress intended, through the McCarran-Ferguson Act, to remove federal jurisdiction over every claim that might be asserted against an insurer in state insolvency proceedings. If nothing else, the argument proves too much, for it would operate to divest exclusively federal jurisdiction as effectively as it would diversity jurisdiction, leaving many

plaintiffs with no forum in which to assert their federal rights.”). *See Also Florida Dept. of Fin. Services v. Midwest Merger Mgmt., LLC*, 4:07CV207-SPM/WCS, 2008 WL 3259045 (N.D. Fla. Aug. 6, 2008) (even when state insurance laws provide exclusive jurisdiction with the receivership court, removal of proceedings to federal court does not interfere with the regulation of insurance so as to require reverse preemption); *AmSouth Bank v. Dale*, 386 F.3d 768, 780-783 (6th Cir.2004) (federal jurisdiction over declaratory judgment action did not interfere with state regulation of insurance where insolvent insurer's position in the action was similar to a plaintiff in a contract or tort case).

In the instant case, allowing Plaintiff's action to move forward would not “invalidate, impair, or supercede”(as those terms are used in the McCarran-Ferguson Act) Delaware's proceedings to liquidate insolvent insurers. If Plaintiff's action against Defendant is successful and Plaintiff is awarded damages, Defendant would then have to present a claim to the Insurance Commissioner of Delaware in order to recover any funds for that judgment from his insurer. The claim based on that judgement would be satisfied subject to the terms of the liquidation plan and the priorities established by Delaware law. Therefore, the McCarran-Ferguson Act is a not appropriate basis for a stay of the proceedings in the current action against Defendant.

**B. No Discretionary Stay or Abstention is Warranted**

A district court may, under certain circumstances, abstain from exercising its jurisdiction in favor of a state court. *Webb v. B.C. Rogers Poultry, Inc.*, 174 F.3d 697 (5<sup>th</sup> Cir. 1999). A federal court's abstention may be exercised in the form of dismissal, remand, or a stay, however where the federal action is one for damages (as it is here) only a stay is within the district court's power,

provided abstention is otherwise appropriate. *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 730-31 (1996).

Abstention in this case is not appropriate because the insolvent insurer is not a party to the action. *See University of Maryland v. Peat Marwick Main & Co.*, 923 F.2d 265, 271 (3<sup>rd</sup> Cir. 1991) (abstention may be ordered in insurer insolvency cases only when one of the parties to the action in which the federal court abstains is the insolvent insurer, its receiver, trustee, officer, or the like). Furthermore, abstention is not appropriate because the Delaware Court would not have jurisdiction over the claim asserted by Plaintiff in the current action. *See University of Maryland*, 923 F.2d at 274-75 (it would be inappropriate to abstain in deference to a state court proceeding in a case where the claims raised in federal court are not within the jurisdiction of the state court).

**1. The Delaware Liquidation Proceedings Pertain to FMC-RRG, Which is Not a Party to the Current Action.**

In the current action, Plaintiff has filed suit against Defendant, the driver of the truck that collided with Plaintiff's vehicle. Plaintiff has not named Defendant's insurer, FMC-RRG, as a defendant in this action. Therefore, the Liquidation and Injunction Order issued by the Delaware Court does not warrant a stay in the current action. *Venez-Olivaris v. Asociacion Hospital Del Maestro, Inc.*, 198 F.Supp.2d 70, 71 (D.P.R. 2002) (a federal court refused to stay proceedings in accordance with a Pennsylvania state court order purporting to stay all proceedings involving defendant's insurance company and its insured because the company was not a party in the federal litigation).

In fact, none of the cases cited by Defendant in support of the stay, involve a suit brought against the insured individual, as in the instant case. *Universal Marine insurance Company, Ltd. v.*

*Beacon Insurance Company, et al.*, 768 F.2d 84 (4<sup>th</sup> Cir. 1985), was an action in which the plaintiff insurance company sought to impose a constructive trust on funds payable to defendant insurance companies involved in state insolvency proceedings. *Id.* at 86-87. Like *Universal*, the defendant in *Anshutz v. J. Ray McDermott, Inc.*, 642 F.2d 94 (5<sup>th</sup> Cir. 1981), was an insolvent insurance company. And *Levy v. Lewis*, 635 F.2d 960 (2<sup>nd</sup> Cir. 1980), also cited by Defendant, involved an action brought against the Superintendent of Insurance of the State of New York, as the liquidator of the plaintiffs' insurance company. *Id.* at 961.

**2. Allowing the Current Action to Proceed Will Not Interfere with the Delaware Liquidation Proceedings**

The establishment of the existence and amount of a claim against the debtor in no way disturbs the possession of the liquidation court, in no way affects title to the property, and does not necessarily involve a determination of what priority the claim should have. *Morris v. Jones*, 329 U.S. 545, 549 (1947). In the present case, Plaintiff is not seeking to establish a claim against FMC-RRG or the Receiver, but rather against Defendant, DIVANIS CABALLE RODRIGUEZ, an independent third party. If an action to establish a claim against the insolvent company itself would not interfere with the liquidator's functions, then neither would an action against a third party, such as Defendant, interfere with the liquidation proceedings. See *University of Maryland*, 923 F.2d at 274, citing *Coit Independence Joint Venture v. FSLIC*, 489 U.S. 561 (1989).

First, the issue of liability of Defendant, the alleged tortfeasor, which is not addressed in the Delaware proceedings, needs to be resolved. If Defendant is found to be liable, then the issue of Plaintiff's damages, which is also not addressed in the Delaware proceedings, needs to be decided. Only once a judgment is issued against Defendant, will the matter of enforcement of the judgment

present itself. Enforcement of a potential judgment against Defendant is beyond the scope of the issues presented to this Court in the current action. If the instant action were to be resolved against Defendant, it would only establish an obligation owed to Defendant by its insurer, FMC-RRG. To collect any funds from FMC-RRG in compensation for any damages awarded in this suit, Defendant would have to present a claim to the Insurance Commissioner of Delaware. Any claim based on a judgement in the current action would only be satisfied subject to the Delaware liquidation proceedings. The Commissioner, as receiver would still retain exclusive jurisdiction over the liquidation of FMC-RRG and the disposition of its assets. Thus, a stay is not appropriate because allowing the current action to proceed will not undermine receivership action in Delaware.

**C. Equity Weighs Against a Stay of the Proceedings**

Defendant has failed to demonstrate a clear case of hardship or inequity to overcome the severe prejudice to Plaintiff that is certain to result from a stay of the proceedings. The prospect of Defendant losing a source of funding for his defense does not rise to the level of demonstrating the requisite “hardship” or “inequity” needed to overcome the undeniable prejudice to Plaintiff. *See Gold v. Johns-Manville Sales Corp.*, 723 F.2d 1068, 1077 (3d Cir. 1983) (citing *Landis v. North American Co.*, 299 U.S. 248, 255, 57 S. Ct. 163, 81 L.Ed. 153 (1936) (the moving party must demonstrate a clear case of hardship or inequity if there is even a fair possibility that the stay would work damage on another party)).

**1. Defendant Has Failed to Show that he Will Suffer any Hardship if the Current Action is Allowed to Proceed**

There has been no showing by Defendant that he is financially insolvent and that he will not be able to fund his defense or pay Plaintiff for his damages should Plaintiff prevail in this action.

In a similar case, the District Court for the Northern District of New York rejected the defendant's argument that the federal proceedings should be stayed due to a state court order or rehabilitation for the defendant's insurance company. *Niemczyk v. Coleco Industries, Inc.*, 581 F. Supp. 717, 718 (N.D.N.Y. 1984). The *Niemczyk* Court explained:

In the instant case the court can find no basis in law or logic for permitting the defendant to hide behind the cloak of a state court stay, which expansively restricts lawsuits against third parties who ultimately are insured by a bankrupt corporation.

The *Niemczyk* Court went on to find that whether the defendant's insurance carrier is able to discharge its obligation to the defendant has no legal effect on a plaintiff's right to sue the defendant in the first place, and that in the event that the defendant's insurer fails to reimburse the defendant for its costs or liability in the lawsuit, the proper remedy available to the defendant is an action for breach of contract. *Niemczyk*, 581 F.Supp. at 717-18.

There is no prejudice on the Defendant if a stay is not issued. While the Defendant may claim prejudice in that it will be forced to defend himself this action, that is not the type of legal prejudice which should be the basis for a stay in this instance. Defendant would be compelled to defend himself in this action if he had no insurance at all. How Defendant will fund his defense is irrelevant to the determination of whether a stay should be issued. And how a potential judgment against Defendant might be enforced is also irrelevant to the determination of whether a stay should be issued in this case. If Plaintiff's claim against Defendant were to prevail, Defendant would be liable to pay for Plaintiff's damages, whether or not he had insurance. Had Defendant had no insurance at the time of the accident in which Plaintiff was injured, Defendant would have no basis at all on which to assert that these proceedings should be stayed. It follows then, that the insolvency

of the company from which Defendant chose to purchase insurance should not warrant a stay of these proceedings.

**2. A Stay of These Proceedings Will Unfairly Prejudice Plaintiff**

A stay of this case will most prejudice Plaintiff. Plaintiff has no contract with FMC-RRG and no claim against FMC-RRG. This case concerns liability of Defendant, DIVANIS CABALLE RODRIGUEZ, for injuries suffered by Plaintiff. A stay of the current proceedings would make it more difficult for Plaintiff to pursue his claim. Plaintiff filed this action, on March 18, 2010, a year and half ago. As time passes, witnesses may disperse and memories may fade. Meanwhile Plaintiff faces mounting medical expenses associated with his injuries.

The interests of Defendant in staying the action do not outweigh the inconvenience and harm which would result to Plaintiff by delaying his action. It would not be fair to Plaintiff, an injured party seeking compensatory damages, for this Court to put him on a back burner solely because Defendant, the alleged tortfeasor responsible for his injuries, chose to purchase insurance from a now insolvent Delaware insurance company.

**CONCLUSION**

A stay of the current proceedings is not mandatory, necessary, or proper. If this action is allowed to proceed and a judgement is entered against Defendant, it would simply be a judgment against Defendant, not against his insurer. Such a judgement would not directly affect the assets of FMC-RRG, but would only raise the potential of a coverage claim by Defendant. The continuation of this action to resolve the issues of liability and damages against Defendant would not interfere in any way with the functions of the Insurance Commissioner in Delaware. Plaintiff's claim against



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CIVIL CASE NO.: 1:11-cv-20672-JLK

CARLOS RUIZ,

Plaintiff,

vs.

DIVANIS CABALLE RODRIGUEZ,

Defendant.

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**DEFENDANT'S REPLY TO PLAINTIFF'S RESPONSE IN OPPOSITION TO  
DEFENDANT'S MOTION TO STAY PROCEEDINGS AND INCORPORATED  
MEMORANDUM OF LAW**

COMES NOW, the Defendant, DIVANIS CABALLE RODRIGUEZ, by and through undersigned counsel, and pursuant to S.D. Fla. L.R. 7.1(c), hereby files this, his reply to Plaintiff's Response in Opposition to Defendant's Motion to Stay Proceedings and Incorporated Memorandum of Law, and in support hereof would show:

**INTRODUCTION**

This action involves a motor vehicle accident between Plaintiff, Carlos Ruiz (Ruiz), and Defendant, Divanis Caballe Rodriguez (Rodriguez), a trucker. The accident occurred on August 8, 2008 and, at the time, Rodriguez was insured by the Federal Motor Carriers Risk Retention Group ("FMC-RRG").

On October 7, 2008, Ruiz's attorney demanded a disclosure of insurance coverage from FMC-RRG pursuant to Fla. Stat. §627.4137 (See Exhibit "A"). On October 21, 2008, FMC-RRG's claims administrator responded to Ruiz's demand as required by §627.4137. (See Exhibit "B"). Later, on February 4, 2010, Ruiz's attorney made a demand against FMC-RRG

asserting that such demand represented Ruiz's "willingness to attempt to resolve this case at this time," and that such demand was "[FMC-RRG's] opportunity to protect [Rodriguez] from the probability of an excess verdict as a result of the accident of August 78, 2008." (See Exhibit "C." In his demand, Ruiz's attorney claimed that "[i]t is clear that 100% liability rests solely with your insured." Id. It further asserted that the demand was made for "the policy limits as settlement of this claim if tendered within (30) days from the date of [the] letter" and that it would be in exchange of an executed "general release in favor of your insurance company and your insured." Id.

Ruiz attorney's demand was rejected, and on March 18, 2010, Ruiz commenced the present action in State Court, which was later removed to this Court on diversity grounds. [D.E. 1]. On September 15, 2011, Rodriguez moved to stay this proceeding for 180 days as a result of Rodriguez' insurer, FMC-RRG, being declared impaired by the Court of Chancery of the State of Delaware. [D.E. 9]. Ruiz opposes Rodriguez' motion raising the following three main objections: that the Delaware liquidation and injunction order does not mandate a stay of the current proceedings; that no discretionary stay or abstention is warranted; and, that equity weighs against a stay of the proceedings.

Rodriguez would assert that for the reasons that follow, Ruiz's objections lack merit and do not constitute proper objections for the denial of a stay as required by the Delaware Liquidation and Injunction Order.

#### MEMORANDUM OF LAW

##### I.

Ruiz claims that the Delaware Liquidation and Injunction Order does not mandate a stay of the current proceedings. Ruiz relies on a general principle that a state court lacks power to

enjoin a federal court action. However, this principle is not a universal truth. Indeed, “reorganization of insolvent insurance companies is a matter of state law and is handled through insolvency proceedings in state court.” See, Universal Marine Ins. Co. v. Beacon Ins. Co., 768 F.2d 84, 88 (4<sup>th</sup> Cir. 1985) (citations omitted). Thus, a state court presiding over an insurer’s insolvency proceeding could enjoin a federal court to interfere with property subject to the jurisdiction of state court in the same manner that a federal court could enjoin a state court to interfere with the property of an estate in a bankruptcy proceeding. *Id.*

Ruiz’s claim that this action does not constitute a claim against FMC-RRG is, at best, disingenuous. Likewise, the allegation that “the current actions is limited to resolution of the issues of liability of the Defendant, the alleged tortfeasor, and what, if any, damages the Plaintiff is entitled to” is, simply, not correct. This is not a declaratory judgment action.<sup>1</sup> Indeed, Ruiz’s actions – *in the form imputing liability and demanding policy limits prior to the filing of this lawsuit* - belie such allegation. Ruiz’s actions show that his real intention is to obtain and execute a judgment against FMC-RRG. The fact that he has not formally named FMC-RRG as a party to the action results from a *temporary* procedural impediment ordained by Fla. Stat. §627.4136(1) which in pertinent part provides that:

“(1) It shall be a condition precedent to the accrual or maintenance of a cause of action against a liability insurer by a person not an insured under the terms of the liability insurance contract that such person shall first obtain a settlement or verdict against a person who is an insured under the terms of such policy for a cause of action which is covered by such policy.”

The correspondence between Ruiz’s attorneys and FMC-RRG show that Ruiz is demanding a payment from FMC-RRG, and it is evident that if a judgment is ever obtained

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<sup>1</sup>In his Complaint, Ruiz “demand[s] judgment for damages, costs, and interest.” [D.E. 1].

against Rodriguez, Ruiz's intention is to join FMC-RRG as a party Defendant pursuant to Fla. Stat. §627.4136(4). Such statute provides in pertinent that:

“(4) At the time a judgment is entered or a settlement is reached during the pendency of litigation, *a liability insurer may be joined as a party defendant for the purposes of entering final judgment* or enforcing the settlement by the motion of any party, unless the insurer denied coverage under the provisions of s. 627.426(2) or defended under a reservation of rights pursuant to s. 627.426(2).” (emphasis added).

Given the above, the facts are clear that Ruiz not only seeks a judgment against Rodriguez but also against FMC-RRG. Indeed, under *Burford v. Sun Oil.*, 319 U.S. 315 (1943), abstention would be required because this federal action would interfere with and disrupt FMC-RRG's liquidation pursuant to Delaware's insurance regulatory scheme. Accordingly, allowing the continuation of these proceedings would clearly interfere with the Delaware reorganization proceedings and would constitute a violation of the McCarran-Ferguson Act, 15 U.S.C. § 1011-1015.

## II.

Ruiz also claims that no discretionary stay is warranted because FMC-RRG is not a party to the current action and allowing the current action to proceed will not interfere with the Delaware liquidation proceedings. In support of this argument, Ruiz relies on *University of Maryland v. Peat Marwick Main & Co.*, 923 F.2d 265 (3<sup>rd</sup> Cir. 1991). The facts in the *University of Maryland* case, however, are substantially different from the facts of this case. In *University of Maryland*, the action that was sought to be stayed was a class action filed on behalf of policyholders, not against the insurer, but against the insurer's auditors resulting from the auditor's false and misleading certifications of the insurer's financial statements. *Id.* at p. 267. The state insurance commissioner intervened to file a motion to dismiss which the trial court granted based on the abstention doctrine announced in *Burford v. Sun Oil.*, *supra*. This decision

by the trial court was vacated by the Court of Appeals, and one of the critical reasons expressed by said court for doing so was that “[the state’s] regulatory scheme governing insurance company insolvencies is not concerned with protecting auditors. Moreover, the policyholders’ claims are not against the assets of [the insurer].” *Id.*, at p. 272.

In the instant case, the FMC-RRG’s assets are clearly at stake. If this action is allowed to proceed, and Ruiz obtains a judgment against Rodriguez, FMC-RRG could become a judgment debtor by the mere filing of a motion pursuant to Fla. Stat. §627.4136(4). Indeed, the argument that FMC-RRG is not a party to this action is more fictitious than real. FMC-RRG’s assets are at risk, and given Ruiz’s intention to collect against FMC-RRG’s assets, failing to grant a stay would undermine the receivership action in Delaware.

Moreover, even if this action is deemed to be asserted only against Rodriguez, the fact remains that courts have frequently allowed the stay of proceedings on principles of comity, even though the action sought to be stayed is only against the insured. See, *Estate of Hupp v. Marr*, 2002 U.S. Dist. LEXIS 4598, 2-4 (S.D. Ind. Feb. 22, 2002) (allowing the stay of an action against the insured on principles of comity even based on the pendency of the insurers’ liquidation procedure); *Marcotte v. Joyce Beverages, Inc.*, 1988 U.S. Dist. LEXIS 13541, 3-4 (S.D.N.Y. Dec. 2, 1988) (same); *Tran v. Antoine Aviation Co.*, 624 F.Supp. 179, 180 (S.D.N.Y. 1985) (same).

### III.

Ruiz claims that Rodriguez’s motion to stay should be denied because Ruiz has failed to demonstrate a clear case of “hardship” or “inequity” to overcome the alleged prejudice that would result from a stay of the proceedings. This argument has no merit. Such case has clearly been demonstrated by the fact that at the inception of this lawsuit, Rodriguez was insured by an

FMC-RRG policy which, among others, it provided liability coverage for up to \$1,000,000.00. At the present time, FMC-RRG has been declared impaired and the funding of such coverage is, at the very least, questionable. See Rodriguez's Motion to Stay Proceedings [D.E. 9] and "Stipulated Liquidation and Injunction Order with Bar Date" attached thereto as Exhibit "A."

Plaintiff also claims that *Gold v. Johns-Manville, et al* 723 F. 2d 1068 (3<sup>rd</sup> Cir. 1983) and *Landis v. North American Co.*, 299 U.S. 248 (1936) support his argument that Mr. Rodriguez's deprivation of its source of funding his defense in this case, given the fact that such source is subject to a liquidation procedure, is not sufficient hardship to justify a 180 days stay. Neither one of these cases support such claim.

First of all, the facts in *Gold* were totally different from the facts in the instant case. In *Gold*, the plaintiff had sued a number of defendants in a personal injury and wrongful death actions. *Gold*, 723 F.2d at p. 1070. The two main defendants had filed petitions for reorganization under Chapter 11 of the Bankruptcy Reform Act of 1978 (the Bankruptcy Code). Several defendants moved the trial court for an *indefinite* stay seeking stay of the action not only against the bankrupt defendants but also against all other defendants. *Id* at p. 1071. The trial court granted a stay as to the bankrupt defendants but severed the action so that the claims against the other defendants could proceed to trial. *Id*. Several defendants filed an appeal and writ of mandamus or prohibition asking the Court of Appeals to reverse the trial court's decision. The appeal was dismissed as the Court concluded not to have appellate jurisdiction. The writ of mandamus and prohibition was denied. *Gold*, 723 F. 2d at p. 1077.

The *Gold* case did not involve a case like the present one, i.e., where the insurer for the only defendant in the action is being subject to a liquidation procedure which, in effect, deprives the defendant of his capacity to fund his defense in the action. Such hardship was not present in

*Gold*. Accordingly, the *Gold* court was never asked to decide and never said that a party's inability to fund its defense as a result of its insurer's liquidation procedure is not a sufficient hardship to justify a limited stay (180 days) such as the one requested in the instant action.

Similarly, the facts in *Landis v. North American Co.*, supra, are totally different from the facts in this case. *Landis* involved an action whereby the District Court for the District of Columbia was asked to interpret and enforce the Public Utility Holding Company Act of 1935. At some point, the District Court was asked for and ordered an *indefinite* stay of the proceeding until the Supreme Court of the United States resolved a similar issue, i.e., the interpretation and enforceability of the same statute, in a separate proceeding that had originated in the United States for the Southern District of New York. *Landis*, 299 U.S., at p. 249-53. The decision to stay by the District Court was reversed by Court of Appeals for the District of Columbia. *Id* at p. 253-54. The Supreme Court granted certiorari to review the Court of Appeals opinion and reversed, not because the stay would not be appropriate in certain circumstances, but because, in that case, it found it to be "*immoderate and hence unlawful*." *Id* at p. 257. Specifically, the Court noted that:

"The stay is immoderate and hence unlawful unless so framed in its inception that its force will be spent within reasonable limits, so far at least as they are susceptible of prevision and description. When once those limits have been reached, the fetters should fall off. To put the thought in other words, an order which is to continue by its terms for an immoderate stretch of time is not to be upheld as moderate because conceivably the court that made it may be persuaded at a later time to undo what it has done. Disapproval of the very terms that have already been approved as reasonable is at best a doubtful outcome of an application for revision. If a second stay is necessary during the course of an appeal, the petitioners must bear the burden, when that stage shall have arrived, of making obvious the need. Enough for present purposes that they have not done so yet."

Accordingly, the Supreme Court remanded the cause to the District Court to re-examine the motion to stay in accordance with the principles laid down in the opinion. *Id* at p. 259. The

instant case does not involve an immoderate stay as Ruiz is only asking for a limited stay of 180 days. If any further stay is required after the expiration of such period Ruiz, in due course would file the appropriate motion.

Finally, Ruiz relies on *Niemczyk v. Coleco Industries, Inc.*, 581 F. Supp. 717 (N.D.N.Y. 1984) and asserts that the Northern District of New York has rejected Rodriguez's argument that the federal proceedings should be stayed due to the receivership action in Delaware. However, in a case with facts similar to the instant case, the Southern District of New York took an approach consistent with the position taken by Rodriguez in the instant case and distinguished the facts in that case from the facts in *Niemczyk*. See *Tran v. Antoine Aviation Co.*, 624 F. Supp. 179 (S.D.N.Y. 1985). *Tran* involved a diversity action in which plaintiff (Cam Tran) sought damages arising out of an automobile accident. The two defendants (Alphonse and Tran) moved for a 180-days stay because their insurance company (Indemnity) was undergoing a liquidation procedure. The Court granted the stay and, as to the prior ruling in *Niemczyk* the court noted:

"While the state courts have no power to stay the federal court's exercise of its own power, (citations omitted), this court will observe the stay as a matter of comity because violating the stay might deprive Alphonse and Din Tran of their bargained-for protection granted under their now cancelled policy. A delay will permit the state courts to determine whether the state's insurance fund will assume the bankrupt insurer's responsibility to defend Alphonse and Din Tran.

While Cam Tran has noted *Niemczyk v. Coleco Industries, Inc.*, 581 F. Supp. 717 (N.D.N.Y. 1984), in which a stay was denied under similar circumstances, *the court in Niemczyk took care to note that "Coleco [defendant] is a multi-million dollar corporation well equipped to finance its own legal affairs." Id. at 718. In this case one defendant, Din Tran, is being sued in his personal capacity and may be prejudiced by failure to respect the state court stay.* It is of no avail to suggest, as did the *Niemczyk* Court, that the defendants' interests are protected because of the possibility that they may bring a subsequent breach of contract action against an insurance company already in liquidation proceedings." (emphasis added).

*Tran*, at p. 180. Likewise, in *Estate of Hupp v. Marr*, 2002 U.S. Dist. LEXIS 4598, 2-4 (S.D. Ind. 2002), a defendant (Dr. Robert J. Steele) sought to stay an action against him because his insurer was undergoing a liquidation procedure. The plaintiffs in that case raised an objection to the stay similar to the one asserted by Ruiz in the instant action, i.e., that Dr. Steele should be left to his own devices to finance his defense. *Id.* at p. 3. The court rejected plaintiffs' arguments and held the following:

"Plaintiffs oppose the stay. They argue that Dr. Steele should be left to his own devices to finance his defense of this action, ...

Dr. Steele's motion and plaintiffs' opposition demonstrate the powerful public interest in the insurance business. The financial difficulty for PHICO inflicts significant harm on innocent third parties -- its own insureds like Dr. Steele and those like plaintiffs who are pursuing claims against its insureds. Dr. Steele's motion requires this court to allocate among the innocent parties here the consequences of PHICO's financial distress. Still, there is a strong public interest in the orderly liquidation of an insurance company and in the orderly marshaling of the resources of state insurance guaranty associations established to protect the customers of insolvent insurers (as well as those who sue those insureds). "The security of insurance companies is vitally important to the economic well-being of a large number of individual citizens. Consequently, the public policy ramifications of decisions regarding insurance companies will often transcend the importance of the case at bar." (citations omitted)"

*Id.* at p. 3-4. See also, *Marcotte v. Joyce Beverages, Inc.*, 1988 U.S. Dist. LEXIS 13541, 3-4 (S.D.N.Y. 1988) (granting a stay in a diversity action for personal injuries because the lack of any prejudice to the plaintiff was so clear, that judicial economy was better served by the stay than by forcing the defendant to choose between defaulting in this action or defending it and generating collateral litigation in the liquidation proceedings court).

### CONCLUSION

Florida law allows the entry of a judgment against an insurer by the mere filing of a motion to join an insurer after the entry of a judgment against its insured. This characteristic of

Florida law makes the stay in the instant action mandatory and proper. The facts clearly show that Plaintiff's demonstrated intention is to seek a judgment against FMC-RRG. Such action would clearly undermine the Delaware liquidation proceedings in violation of McCarran-Ferguson Act, 15 U.S.C. § 1011-1015. Moreover, even if the stay is not mandatory federal courts have frequently relied on principles of comity to grant limited stays even when the action sought to be stayed is solely against the insured. Indeed, a strong public interest exists in the orderly liquidation of an insurance company and in the orderly marshaling of the resources of state insurance guaranty associations established to protect the customers of insolvent insurers.

WHEREFORE, Defendant, DIVANIS CABALLE RODRIGUEZ, respectfully moves to Stay this proceedings for an initial period of 180 days subject to it be extended depending on the status of Federal Motor Carriers Risk Retention Group's liquidation procedure before the Court of Chancery of the State of Delaware.

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**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing has been furnished via CM/ECF, this 13 day of October, 2011, to: Anthony J. Soto, Esq., Law Offices of

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Miami-Dade (305) 661-6000  
Fax (305) 670-7555

2 South University Drive, Suite 225  
Plantation, Florida 33324  
Broward (954) 661-6000  
Fax (954) 476-2148

\*Board Certified Civil Trial Attorney  
\*\*AV Rated by Martindale-Hubbell Law Directory

*Please respond to the Broward Office*

October 7, 2008

Via Fax 732-782-0377 & Regular Mail  
Federal Motors Carriers  
5114 Route 33-34 North  
P.O. Box 906  
Farmingdale, NJ 07727

ATTN: CLAIMS DEPT

RE: Our Client: Carlos Ruiz  
Your Insured: Divanis Rodriguez  
Policy Number: 08-0369  
Date of Incident: 8/8/2008

Dear Sir/Madam:

Please be advised that this firm has been retained to represent Carlos Ruiz in a claim for damages resulting from an accident on the above captioned date.

Please accept this letter as a demand for disclosure, within 30 days, of all information required by Florida Statute 627.4137. Please also include any umbrella and/or any excess insurance coverage your policy holder may carry.

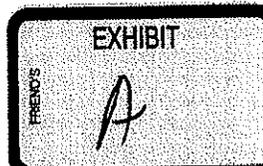
We will forward to you all medical bills and reports upon their receipt.

Please contact our client directly regarding his/her property damage.

We look forward to hearing from you.

Very truly yours,

  
Robert M. Rubenstein  
For the Firm





The Attention You Deserve

October 21, 2008

Law Offices of Robert Rubenstein, P.A.  
2 South University Dr., Ste 235  
Plantation, FL 33324

Re: Insured: Divanis Caballe Rodriguez  
Claim #: FMC0800243  
Date of Loss: 8/8/08  
Your Client: Carlos Ruiz

Dear Mr. Rubenstein:

We are in receipt of your October 7, 2008 letter addressed to Federal Motor Carriers advising that you represent Carlos Ruiz for injuries sustained in the accident that occurred on August 8, 2008.

We are the claim administrator for Federal Motor Carriers RRG, the insurer that issued policy number CAT-2007-0005-01-146 to Divanis Caballe Rodriguez.

As required by Florida Statute 627.4137, enclosed please find the following:

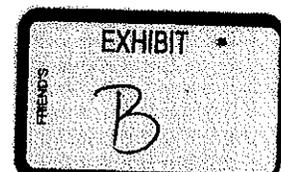
- A. Insurer's Name: Federal Motor Carriers RRG, Inc.
- B. Name of Each Insured: Divanis Caballe Rodriguez
- C. Limits of Liability: \$1,000,000.00
- D. Known Coverage Defense: Non-compliance with Conditions

Enclosed please find a copy of the Declaration page for the applicable policy. We are not aware of any excess or umbrella policies which apply to this loss.

If you feel we have failed to comply with all of the requirements as set forth under 627.4137, please do not hesitate to contact me to discuss.

Finally, we have hired a local adjusting firm, Johns Eastern Company, to investigate this matter on our behalf. They will be in touch with you in the near future to obtain additional information. Thank you.

Criterion Claim Solutions  
P. O. Box 247049 • Omaha, NE 68124-7049  
Phone: 1-888-816-2227 • 402-514-6100  
Fax: 402-397-1920



Sincerely,

Linda M. Mihm  
Senior Claim Specialist  
Criterion Claim Solutions, Inc.

Enc.

**LAW OFFICES OF ROBERT RUBENSTEIN, P.A.**

Website: [www.robertrubenstein.com](http://www.robertrubenstein.com)  
 E-mail: [info@robertrubenstein.com](mailto:info@robertrubenstein.com)

Robert Rubenstein\*  
 Anthony J. Soto\* †  
 Michael J. Rotundo\*  
 Eric Shapiro  
 Lynette Monem  
 Veronica Amato  
 Nicole Armstrong  
 Irwin Aas ‡

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\*AV Rated by Martindale-Hubbell Law Directory  
 †Board Certified Civil Trial Attorney  
 ‡Also Licensed in Connecticut

*Please respond to the Broward Office*

February 4, 2010

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
 Crittenden Adjustment Company, Inc.  
 ATTN: Chuck Stanski, Branch Manager  
 1414 NW 107<sup>th</sup> Avenue, Suite 202  
 Miami, FL 33172

RE: Our Client: Carlos Ruiz  
 Your Insured: Divanis Rodriguez

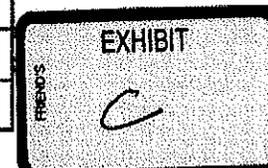
File No.: MF955547  
 Date of Incident: 8/8/2008

Dear Mr. Stanski:

As you know, it has been over one year since the Mr. Carlos Ruiz's accident. I trust your investigation is complete and accordingly, the purpose of this letter is to set forth our view of the liability and damages and to express our willingness to attempt to resolve this case at this time. This is your opportunity to protect your insured from the probability of an excess verdict as a result of the accident of August 8, 2008.

Accordingly, we are enclosing herewith all relevant medical specials incurred by our client for your review.

MEDICAL	NBHD Neurosurgery	\$8,497.00
MEDICAL	County Line Chiropractic (Plantation)	\$18,986.00
MEDICAL	Stuart B. Krost, M.D.	\$4,080.00
MEDICAL	CMI of Plantation	\$2,500.00
MEDICAL	Heldo Gomez, M.D.	\$27,250.00
MEDICAL	Pembroke Pines MRI, Inc.	\$530.31
MEDICAL	BGMC Hospitalist Services	\$860.00
MEDICAL	Jane Bistine, M.D.	\$425.00
MEDICAL	Nile Lestrage, M.D.	\$1,200.00
MEDICAL	Sheridan Emergency Physician Services	\$373.00
MEDICAL	Westside Regional Medical Center	\$203.75
MEDICAL	Columbia Hospital	\$317.00
MEDICAL	Columbia Hospital	\$27,052.00
MEDICAL	Sheridan Healthcorp, Inc.	\$1,498.00
MEDICAL	Columbia Hospital	\$979.00



MEDICAL	Sheridan Emergency Physician Services	\$402.00
MEDICAL	Phoenix Emergency Med of Broward	\$625.00
MEDICAL	Broward General Medical Center	\$72,707.94
MEDICAL	Anesco North Broward, LLC	\$2,280.00
MEDICAL	Broward General Medical Center	\$652.00
MEDICAL	Phoenix Emergency Med of Broward	\$680.00
MEDICAL	Broward General Medical Center	\$3,121.20
	Total	\$175,219.20

It is our view that the likely jury verdict range in far in excess of your insurance policy limits. We base our position on the following:

#### LIABILITY

Our client, Mr. Ruiz, was traveling Northbound on the exit ramp on I-95 approaching Sample Road. As he proceeded to turn left onto Sample Road, your insured proceeded to change lanes on to the lane where our client was traveling, and struck the side of our client's vehicle.

It is clear that 100% liability rests solely with your insured. Divanis Rodriguez should have been more attentive, kept a proper lookout on the roadway, and used due caution and care in the operation of his vehicle. Divanis Rodriguez failed to do so, and as a result caused a collision with the vehicle driven by Mr. Ruiz whereby he sustained serious personal injuries.

#### DAMAGES

Mr. Ruiz was in significant pain following the accident. Pain was concentrated to his neck and back. He presented to the emergency department of Westside Regional Hospital where he was prescribed Vicodin and Flexeril to treat the pain.

Initially, he received conservative chiropractic treatment at County Line Chiropractic. Mr. Ruiz was experiencing neck pain that radiated to his shoulders, and lower back pain that radiated down his legs. He was diagnosed as sustaining lumbar radiculitis, cervical radiculitis, thoracic sprain/strain, cervical sprain/strain, lumbar sprain/strain and headaches. As my client's back pain persisted despite undergoing several weeks of therapy sessions, Mr. Ruiz underwent an MRI of the cervical spine and lumbar spine. The cervical MRI revealed herniations and disc bulges. The lumbar MRI revealed a disc herniation at L5-S1 and disc bulging. He had made a limited recovery and was given a 13% whole body impairment by Dr. Amir Hajisafari.

Due to persistent pain, Mr. Ruiz continued to receive treatment. He began treating with Dr. Stuart Krost and Dr. Heldo Gomez. He received lumbar trigger point injections to the lumbar spine which were ineffective. On February 18, 2009, Mr. Ruiz underwent a provocative lumbar discography at L3-4, L4-5 and L5-S1 that was performed by Heldo Gomez. On March 6, 2010, Mr. Ruiz underwent a posterolateral extrapedicular, far lateral extraforminal, transpedicular intradiscal decompression at L4-5 and L5-S1. Mr. Ruiz continued to be symptomatic following the surgery.

Following the surgery, Mr. Ruiz began to experience excruciating, sharp stabbing pain as well as numbness to his back. He was prescribed additional pain medication. Unfortunately, the pain was so severe, that he had difficulty walking. He initially required assistance of a cane and could only move a few feet at a time. He could not get dressed on his own and could not do every day activities. He also could not continue working. He later could not walk from the pain, and became confined to his bed.

Due to the severe distress that Mr. Ruiz was experiencing, he presented for a consultation with Dr. Nile Lestrage. Mr. Ruiz received cortisone injections to his back. Unfortunately, they provided little relief. Dr. Lestrage was concerned that Mr. Ruiz had developed an infection and recommended that Mr. Ruiz undergo a C-reactive protein cidrate and an indhum leukocyte scan to test for a possible bone infection. The tests were performed at Broward General Hospital.

On May 12, 2009, Mr. Ruiz was admitted to Broward General Hospital due to positive test results following an infectious disease consult. Mr. Ruiz had developed a severe and gross infection to his spine. On May 14, 2009, Dr. Amos Stoll at Broward General Hospital performed a posterior lumbar interbody fusion with autogenous iliac crest structural bone graft. A PICC line was also inserted to his arm. According to the operative report, the infection was so severe that the entire disk was removed in one piece because it had become so isolated from the infection. After being released from the hospital, Mr. Ruiz required in-home medical care. He was placed with a body cast and was unable to walk. He continued to be in severe pain and discomfort.

On June 20, 2009, Mr. Ruiz presented to Broward General Medical Center to replace a broken PICC line that had been inserted following his surgery.

The injuries sustained were extremely debilitating and life altering. Mr. Ruiz lost a significant amount of weight. His weight dropped from 230 pounds to 165 pounds. Recovery has been long and the disruption to his life has been extremely difficult to bear. The surgery and treatments have provided some relief for Mr. Ruiz, but he still experiences painful and uncomfortable episodes consistently as a result of the accident. He had and continues to have difficulty sitting, standing, laying down and sleeping, as he cannot not find a comfortable position that does not cause pain. The injuries sustained were extremely debilitating and life altering and have significantly decreased Mr. Ruiz's enjoyment of life. Prior to the accident Mr. Ruiz was a very active young man. Unfortunately, he has many restrictions and limitations. Furthermore, he has been instructed to avoid any physically stressful or prolonged activities that will exacerbate his condition. These injuries have dominated Mr. Ruiz's life and continues to adversely affect it.

In addition, Mr. Ruiz incurred lost wages and could not return to his employment due to these injuries. He was employed by Bon's Barricades, earning \$12.00 per hour and working 40 hours per week.

#### **DEMAND**

You have represented that there is a total of \$1,000,000.00 in available insurance coverage. As you can see from the serious injuries my client has incurred, this case is worth in excess of your insured's policy limits of \$ 1,000,000.00. My client has authorized me to accept the policy limits as settlement of this claim if tendered within 30 days from the date of this letter, that is, by March 6, 2010, at 5:00 p.m. This offer to settle may be accepted only by performance of each of the following conditions before the above deadline:

1. Tender of a check for the policy limits made out to "The Law Offices of Robert Rubenstein, P.A. Trust Account and our client".
2. Receipt by our office of an affidavit stating that you have verified that your insured was not acting in the course and scope of employment when the accident took place.
3. Receipt by our office of an affidavit stating that you have verified that there is no additional insurance available that may be used to compensate our client for their loss arising from this accident.
4. Our client must be reimbursed for all property damage resulting from this accident by the date set forth above.

Please understand that this settlement offer is intended to be an offer for a unilateral contract which will be accepted only by strict performance and not a promise to perform by your insurance company or substantial performance or partial performance by your insurance company, anything other than strict performance will be treated as a counteroffer. In return for strict compliance with the above, my client will execute a general release in favor of your insurance company and your insured.

My client has authorized me to accept the policy limits only if it is tendered within the time limit set forth above. Should we file suit in this matter a judgement in excess of your insured's policy limits is certain. Please advise your insured that we will pursue any excess judgment from his/her personal assets.

You can protect your insured by tendering the policy limits in compliance with the terms of this offer. This demand is conditioned upon there being no additional insurance available above the policy limits and that your insured was not in the course and scope of employment at the time of the incident. This demand is also subject to the consent of the underinsured motorist carrier.

We look forward to your prompt attention to this matter and appreciate your cooperation.

Please govern yourselves accordingly.

Sincerely,

  
Veronica Amato,  
For the Firm.

VA/pf

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CIVIL CASE NO.: 1:11-cv-20672-JLK

CARLOS RUIZ,

Plaintiff,

vs.

DIVANIS CABALLE RODRIGUEZ,

Defendant.

**EDWARD R. NICKLAUS, ESQ., and NICKLAUS & ASSOCIATES, P.A.'s**  
**MOTION TO WITHDRAW AS COUNSEL FOR DEFENDANT**

COMES NOW, counsel of record for Defendant, EDWARD R. NICKLAUS, ESQ. and NICKLAUS & ASSOCIATES, P.A., hereby serving this their Motion to Withdraw as Counsel for Defendant, DIVANIS CABALLE RODRIGUEZ, and in support of same, counsel for Defendant asserts the following:

1. Nicklaus & Associates P.A., through its owner and managing partner, attorney, Edward R. Nicklaus, was retained by the Defendant's insurer, Federal Motor Carriers Risk Retention Group ("FMC-RRG"), to defend the claims of the Plaintiff, Carlos Ruiz, in the above-captioned matter.
2. Irreconcilable differences regarding the continued representation in this case have arisen between Mr. Rodriguez and his counsel, Nicklaus & Associates P.A., and Edward R. Nicklaus, Esq., which prevent counsel from effective representation in this case.
3. Counsel for the Defendant requests an order allowing him, and Nicklaus & Associates, P.A. to withdraw as counsel for Divanis Caballe Rodriguez.

4. It will cause no prejudice to the Plaintiff for this motion to be granted. However, there is a trial date currently scheduled for May 7, 2012, and among other deadlines the discovery deadline is currently set for December 28, 2011. On behalf of Defendant, counsel would ask that if the Court grants this motion, a sixty (60) day period be granted to the Defendant to retain new counsel and that all deadlines in this case also be extended for an additional sixty (60) days.

5. Defendant, Mr. Rodriguez, has been provided a copy of this motion to his address of record, including via e-mail. Mr. Rodriguez address is 68-70<sup>th</sup> Street, First Floor, Guttenberg, NJ 07093. His cell phone number is 305-457-1284, and e-mail address: tito170973@yahoo.com.

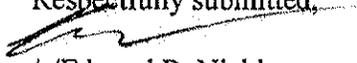
6. Pursuant to S.D. Fla. L.R. 7.1(a)(2) a proposed Order accompanies this motion.

WHEREFORE, counsel for the plaintiff, ED WARD R. NICKLAUS, ESQ. and NICKLAUS & ASSOCIATES, P.A., request this Motion be granted.

**CERTIFICATE OF GOOD FAITH EFFORT**

Pursuant to S.D. Fla. L.R. 7.1(a)(3), counsel for the Defendant has conferred about this motion with counsel for the Plaintiff, Anthony Soto, Esq., and Mr. Soto has expressed not to oppose to the motion.

Respectfully submitted,

  
/s/Edward R. Nicklaus  
EDWARD R. NICKLAUS  
Florida Bar No. 138399  
GUSTAVO A. MARTINEZ  
Florida Bar No.: 668575  
NICKLAUS & ASSOCIATES, P.A.  
4651 Ponce de Leon Blvd., Suite 200  
Coral Gables, Florida 33146  
Telephone: 305-460-9888  
Facsimile: 305-460-9889  
edwardn@nicklauslaw.com  
gustavom@nicklauslaw.com  
ATTORNEYS FOR DEFENDANT

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing was served via CM/ECF to: Anthony J. Soto, Esq., Law Offices of Robert Rubenstein, P.A., *Attorneys for Plaintiff*, 9350 Financial Centre - Suite 1110, 9350 South Dixie Highway, Miami, Florida 33156., this 9 day of December, 2011.

/s/ Edward R. Nicklaus  
EDWARD R. NICKLAUS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CIVIL CASE NO.: 1:11-cv-20672-JLK

CARLOS RUIZ,

Plaintiff,

vs.

DIVANIS CABALLE RODRIGUEZ,

Defendant.

**ORDER ON EDWARD R. NICKLAUS, ESQ., and NICKLAUS & ASSOCIATES, P.A.'s  
MOTION TO WITHDRAW AS COUNSEL FOR DEFENDANT**

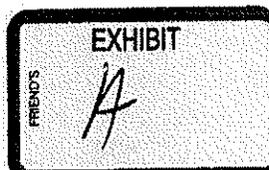
THIS CAUSE, having come before the Court on Edward R. Nicklaus, Esq. and Nicklaus & Associates, P.A.'s Motion to Withdraw as Counsel for Defendant, and the Court being otherwise duly advised in its premises, it is hereby,

ORDERED and ADJUDGED that said motion is GRANTED. The Court grants the Defendant sixty (60) days from the date of this Order to retain new counsel. Upon the filing of an appearance by new counsel, the Court shall issue an Amended Order Setting Trial along with new deadlines.

DONE and ORDERED in chambers at Miami-Dade County, Miami, Florida, this \_\_\_\_ day of December, 2011.

James Lawrence King  
District Court Judge

Copies furnished to:  
Edward R. Nicklaus, Esq.  
Anthony J. Soto, Esq.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 11-20672-CV-WILLIAMS

CARLOS RUIZ,

Plaintiff,

vs.

DIVANIS CABALLE RODRIGUEZ

Defendant.

ORDER SETTING SCHEDULE, REQUIRING MEDIATION, REFERRING CERTAIN  
MATTERS TO MAGISTRATE JUDGE, AND ESTABLISHING PRE-TRIAL  
PROCEDURES

This MATTER is set for trial during the Court's two-week trial calendar beginning on July 16, 2012. Calendar call will be held at 11:00 a.m. on July 10, 2012. No pre-trial conference will be held unless a Party requests one no later than 30 days prior to the calendar call or the Court determines that one is necessary. The Parties shall adhere to the following schedule:

I. Schedule.

February 7, 2012

The Parties shall furnish lists with names and addresses of fact witnesses. The Parties are under a continuing obligation to supplement discovery responses with ten (10) days of receipt or other notice of new or revised information.

March 7, 2012 The Plaintiff shall disclose experts, expert witness summaries and reports, as required by Local Rule 16.1(k).

March 21, 2012 The Defendant shall disclose experts, expert witness summaries and reports, as required by Local Rule 16.1(k).

March 28, 2012 The Parties shall exchange rebuttal expert witness summaries and reports, as required by Local Rule 16.1(k).

April 13, 2012 The Parties shall complete all discovery, including expert discovery.

May 4, 2012 The Parties shall complete mediation and file a mediation report with the Court.

May 4, 2012 The Parties shall file all dispositive pre-trial motions and memoranda of law.

June 21, 2012 The Parties shall file a joint pre-trial stipulation, as required by Local Rule 16.1(e) and final proposed jury

instructions. Joint proposed jury instructions or conclusions of law (for non-jury trials) shall outline: 1) the legal elements of Plaintiff's claims, including damages; and 2) the legal elements of the defenses that are raised.

June 21, 2012

The Parties shall file witness and exhibit lists and all motions *in limine*. The witness list shall include only those witnesses the Parties actually intend to call at trial and shall include a brief synopsis of their testimony. The exhibit lists shall identify each witness that will introduce each exhibit.

- II. Mediation. On or before **February 7, 2012**, the Parties shall: schedule a time, date, and place for mediation; and jointly file a proposed order scheduling mediation in the form specified by Local Rule 16.2(H). If the Parties cannot agree on a mediator, they shall notify the Clerk in writing immediately, and the Clerk shall designate a certified mediator on a blind rotation basis. Counsel for all Parties shall familiarize themselves with, and adhere to, all provisions of Local Rule 16.2.
  
- III. Referral. Pursuant to 28 U.S.C. § 636 and this District's Magistrate Judge Local Rules, all non-dispositive pre-trial motions are referred to Magistrate

Judge William C. Turnoff. Such motions shall include, but are not limited to, motions to appear pro hac vice, motions to proceed in forma pauperis, discovery-related motions, motions for attorney's fees and costs, motions for sanctions, and motions filed pursuant to Federal Rules of Civil Procedures 12, 13, and 14. However, this Order does not refer any motion that requests a continuance or an extension of the pre-trial motions deadline or the trial date. The Parties shall comply with any separate procedures on discovery disputes as set out by the Magistrate.

- IV. Motions. Strict compliance with the Local Rules is expected with regard to motion practice. See Local Rule 7.1. For example, when filing non-dispositive motions, the moving Party shall submit a proposed order in either Word or WordPerfect format via email to Chambers at [Williams@flsd.uscourts.gov](mailto:Williams@flsd.uscourts.gov). Local Rule 7.1(a)(2). Counsel for the moving party must also confer, or make a reasonable effort to confer, before filing certain motions, as required by Local Rule 7.1(a)(3).

Strict compliance with the Local Rules is also expected with regard to motions for summary judgment. See Local Rule 7.5. For example, the moving Party must contemporaneously file a statement of undisputed material facts, delineating by number each material fact, supported with specific citations to the record (Docket Entry, Exhibit, Page Number(s)). The opposing Party must file contemporaneously with its opposition a response to the statement of material facts, which shall respond by corresponding number

to each of the moving Party's statement of material facts. Local Rule 7.5(c). The opposing Party shall state, based on citations to the record, whether each fact is disputed or undisputed. If the fact is disputed, the opposing Party shall state why the dispute is a material one. "All material facts set forth in the movant's statement . . . will be deemed admitted unless controverted by the opposing Party's statement, provided that the Court finds that the movant's statement is supported by evidence in the record." Local Rule 7.5(d). These procedures shall also apply to the moving Party when responding to any additional facts set forth in the opposing Party's statement of material facts.

The Parties may stipulate to extend the time to answer interrogatories, produce documents and answer requests for admission. The Parties shall not file with the Court notices or motions memorializing any such stipulation unless the stipulation interferes with the time set for completing discovery, for hearing a motion, or for trial. Stipulations that would so interfere may be made only with the Court's approval. See Fed. R. Civ. P. 29. In addition to the documents enumerated in Local Rule 26.1(B), the Parties shall not file notices of deposition with the Court.

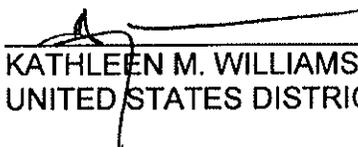
Any Party seeking to make a filing under seal shall comply with Local Rule 5.4. The Parties cannot override the requirements of that Rule through a joint protective order.

- V. Jury Instructions. The Parties shall submit their proposed jury instructions jointly, though they need not agree on each or any instruction. If the Parties

do not agree on a proposed instruction, that instruction shall be set forth in bold typeface. Instructions proposed only by a plaintiff shall be underlined; instructions proposed only by a defendant shall be italicized. Every instruction must be supported by a citation of authority. The Parties shall use as a guide the Eleventh Circuit Pattern Jury Instruction for Civil Cases, including the directions to counsel contained therein. The Parties shall submit their proposed instructions via email to Chambers at [Williams@flsd.uscourts.gov](mailto:Williams@flsd.uscourts.gov).

- VI. Settlement. If the case settles in whole or in part, counsel must inform the Court within two (2) days by calling Chambers at (305) 523-5540 and thereafter filing a joint stipulation of dismissal.

**DONE AND ORDERED** in Chambers, at Miami, Florida, this 27 day of December, 2011.

  
KATHLEEN M. WILLIAMS  
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 11-20672-CV-WILLIAMS

CARLOS RUIZ,

Plaintiff,

vs.

DIVANIS CABALLE RODRIGUEZ

Defendant.

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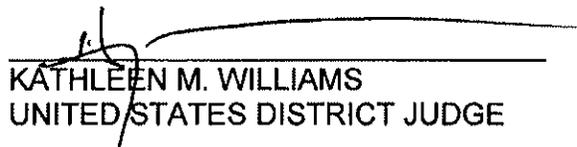
**ORDER**

**THIS MATTER** is before the Court on Defendant's motion to stay proceedings (DE 9) and a motion to withdraw by Defendant's counsel (DE 12). Upon review of the record and the motion, it is hereby **ORDERED AND ADJUDGED** as follows:

- (1) Counsel's motion to withdraw (DE 12) is **GRANTED**. Edward R. Nicklaus, Esq. and the firm of Nicklaus & Associates, P.A. are hereby permitted to withdraw as counsel for Defendant, and are terminated as counsel in this proceeding by this Order. On or before January 30, 2012, Defendant shall file a status report indicating whether he intends to proceed with new counsel. Failure to abide by this order will result default judgment being entered. *See Wahl v. McIver*, 772 F.2d 1169, 1174 (11th Cir. 1985) ("The district court has the authority to enter default judgment for failure to prosecute with reasonable diligence or to comply with its orders or rules of procedure.").

- (2) Per the request by Defendant, which has not been opposed, the Court will extend pretrial deadlines to accommodate Mr. Rodriguez's retention of new counsel. The Court will issue a revised scheduling order.
- (3) Given the extension of deadlines in this case, Defendant's motion to stay proceedings (DE 9) is **DENIED**.

**DONE AND ORDERED** in chambers in Miami, Florida, this 27<sup>th</sup> day of December, 2011.

  
KATHLEEN M. WILLIAMS  
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CIVIL CASE NO: 1:11-cv-20672-KMW

**CARLOS RUIZ,**

**Plaintiff,**

vs.

**DIVANIS CABALLE RODRIGUEZ,**

**Defendant.**

**PLAINTIFF, CARLOS RUIZ'S DISCLOSURE OF EXPERTS AND EXPERT WITNESS  
PURSUANT TO LOCAL RULE 16.1(k)**

**COMES NOW** the Plaintiff, **CARLOS RUIZ**, by and through their undersigned counsel and in compliance with this Court's Order Setting Schedule, Requiring Mediation, Referring Certain Matters to Magistrate Judge and Establishing Pre-Trial Procedures dated December 27<sup>th</sup>, 2011 and hereby files his Disclosure of Experts and Expert Witnesses Pursuant to Local Rule 16.1(k) as follows:

1. Dr. Stuart B. Krost  
3618 Lantana Road  
Suite 201  
Lake Worth, Florida 33462

Although not a formally retained expert witness, the Plaintiff lists Dr. Krost in an abundance of caution. It is anticipated that Dr. Krost will testify regarding the care and treatment that he provided to Mr. Ruiz; the costs associated with that care; the extent of Mr. Ruiz's injuries; the anticipated need for future care; the costs associated with that future care; the permanency of Mr. Ruiz's injuries; and, the effect that those injuries may have on Mr. Ruiz. It is anticipated that Dr. Ruiz will base his testimony on his experience, training and treatment of Mr. Ruiz.

2. Nile Lestrangle, M.D.  
1600 S. Federal Highway  
10<sup>th</sup> Floor  
Pompano Beach, Florida 33062

Although not a formally retained expert witness, the Plaintiff lists Dr. Lestrangle in an abundance of caution. It is anticipated that Dr. Lestrangle will testify regarding the care and treatment that he provided to Mr. Ruiz; the costs associated with that care; the extent of Mr. Ruiz's injuries; the anticipated need for future care; the costs associated with that future care; the

permanency of Mr. Ruiz's injuries; and, the effect that those injuries may have on Mr. Ruiz. It is anticipated that Dr. Ruiz will base his testimony on his experience, training and treatment of Mr. Ruiz.

3. Keith L. Mullenger  
CMI Plantation  
150 Northwest 70<sup>th</sup> Avenue  
Suite 1  
Plantation, Florida

Although not a formally retained expert witness, the Plaintiff lists Dr. Mullenger in an abundance of caution. It is anticipated that Dr. Mullenger will testify regarding the Plaintiff's medical condition, injuries, causation, as well as his interpretation and professional opinion after reviewing Plaintiff's MRI films, the extent of Mr. Ruiz's injuries; the anticipated need for future care; the costs associated with that future care; the permanency of Mr. Ruiz's injuries; and, the effect that those injuries may have on Mr. Ruiz.

4. Amir Hajisafari, D.C.  
County Line Chiropractic (Plantation)  
199 North State Road 7  
Plantation, Florida 33317

Although not a formally retained expert witness, the Plaintiff lists Dr. Hajisafari in an abundance of caution. It is anticipated that Dr. Hajisafari will testify regarding the care and treatment that he provided to Mr. Ruiz; the costs associated with that care; the extent of Mr. Ruiz's injuries; the anticipated need for future care; the costs associated with that future care; the permanency of Mr. Ruiz's injuries; and, the effect that those injuries may have on Mr. Ruiz. It is anticipated that Dr. Ruiz will base his testimony on his experience, training and treatment of Mr. Ruiz.

5. Ronald I. Landau, M.D.  
County Line Chiropractic (Plantation)  
199 North State Road 7  
Plantation, Florida 33317

Although not a formally retained expert witness, the Plaintiff lists Dr. Landau in an abundance of caution. It is anticipated that Dr. Landau will testify regarding the Plaintiff's medical condition, injuries, causation, as well as his interpretation and professional opinion after reviewing Plaintiff's MRI/x-ray films, the extent of Mr. Ruiz's injuries; the anticipated need for future care; the costs associated with that future care; the permanency of Mr. Ruiz's injuries; and, the effect that those injuries may have on Mr. Ruiz.

6. William W. Atherton, D.C.  
Chiropractic Radiology Consultants, P.,A.  
795 NE 127<sup>th</sup> Street  
North Miami, Florida 33161

Although not a formally retained expert witness, the Plaintiff lists Dr. Atherton in an abundance of caution. It is anticipated that Dr. Atherton will testify regarding the care and treatment that he provided to Mr. Ruiz; the costs associated with that care; the extent of Mr. Ruiz's injuries; the anticipated need for future care; the costs associated with that future care; the permanency of Mr. Ruiz's injuries; and, the effect that those injuries may have on Mr. Ruiz. It is anticipated that Dr. Ruiz will base his testimony on his experience, training and treatment of Mr. Ruiz.

7. Jane E. Bistline, M.D.  
Pain Management  
2047 Palm Beach Lakes Boulevard  
Suite 300  
West Palm Beach, Florida 33409

Although not a formally retained expert witness, the Plaintiff lists Dr. Bistline in an abundance of caution. It is anticipated that Dr. Bistline will testify regarding the care and treatment that he provided to Mr. Ruiz; the costs associated with that care; the extent of Mr. Ruiz's injuries; the anticipated need for future care; the costs associated with that future care; the permanency of Mr. Ruiz's injuries; and, the effect that those injuries may have on Mr. Ruiz. It is anticipated that Dr. Ruiz will base his testimony on his experience, training and treatment of Mr. Ruiz.

8. Dr. Michael Wolford, DO  
Columbia Hospital  
Emergency Department  
2201 45<sup>th</sup> Street  
West Palm Beach, Florida

Although not a formally retained expert witness, the Plaintiff lists Dr. Wolford in an abundance of caution. It is anticipated that Dr. Wolford will testify regarding the care and treatment that he provided to Mr. Ruiz; the costs associated with that care; the extent of Mr. Ruiz's injuries; the anticipated need for future care; the costs associated with that future care; the permanency of Mr. Ruiz's injuries; and, the effect that those injuries may have on Mr. Ruiz. It is anticipated that Dr. Ruiz will base his testimony on his experience, training and treatment of Mr. Ruiz.

9. David R. Gilchrist, DO  
Broward General Medical Center  
1600 S. Andrew Avenue  
Fort Lauderdale, Florida 33316

Although not a formally retained expert witness, the Plaintiff lists Dr. Gilchrist in an abundance of caution. It is anticipated that Dr. Gilchrist will testify regarding the care and treatment that he provided to Mr. Ruiz; the costs associated with that care; the extent of Mr. Ruiz's injuries; the anticipated need for future care; the costs associated with that future care; the permanency of Mr. Ruiz's injuries; and, the effect that those injuries may have on Mr. Ruiz. It is anticipated that Dr. Ruiz will base his testimony on his experience, training and treatment of Mr. Ruiz.

10. Jagadeesh Reddy, M.D.  
Broward General Medical Center  
1600 S. Andrew Avenue  
Fort Lauderdale, Florida 33316

Although not a formally retained expert witness, the Plaintiff lists Dr. Reddy in an abundance of caution. It is anticipated that Dr. Reddy will testify regarding the care and treatment that he provided to Mr. Ruiz; the costs associated with that care; the extent of Mr. Ruiz's injuries; the anticipated need for future care; the costs associated with that future care; the permanency of Mr. Ruiz's injuries; and, the effect that those injuries may have on Mr. Ruiz. It is anticipated that Dr. Ruiz will base his testimony on his experience, training and treatment of Mr. Ruiz.

11. Dr. Heldo Gomez  
Florida Neurosurgery & Orthopaedic Institute  
7300 Northwest 5<sup>th</sup> Street  
Plantation, Florida 33317

Although not a formally retained expert witness, the Plaintiff lists Dr. Gomez in an abundance of caution. It is anticipated that Dr. Gomez will testify regarding the care and treatment that he provided to Mr. Ruiz; the costs associated with that care; the extent of Mr. Ruiz's injuries; the anticipated need for future care; the costs associated with that future care; the permanency of Mr. Ruiz's injuries; and, the effect that those injuries may have on Mr. Ruiz. It is anticipated that Dr. Ruiz will base his testimony on his experience, training and treatment of Mr. Ruiz.

12. Rajiv R. Chokshi, M.D.  
Broward General Medical Center  
1600 S. Andrew Avenue  
Fort Lauderdale, Florida 33316

Although not a formally retained expert witness, the Plaintiff lists Dr. Chokshi in an abundance of caution. It is anticipated that Dr. Chokshi will testify regarding the care and treatment that he provided to Mr. Ruiz; the costs associated with that care; the extent of Mr. Ruiz's injuries; the anticipated need for future care; the costs associated with that future care; the permanency of Mr. Ruiz's injuries; and, the effect that those injuries may have on Mr. Ruiz. It is anticipated that Dr. Ruiz will base his testimony on his experience, training and treatment of Mr. Ruiz.

13. Richard Mendel, M.D.  
Columbia Hospital  
2201 45<sup>th</sup> Street  
West Palm Beach, Florida 33407

Although not a formally retained expert witness, the Plaintiff lists Dr. Mendel in an abundance of caution. It is anticipated that Dr. Mendel will testify regarding the care and treatment that he provided to Mr. Ruiz; the costs associated with that care; the extent of Mr. Ruiz's injuries; the anticipated need for future care; the costs associated with that future care; the permanency of Mr. Ruiz's injuries; and, the effect that those injuries may have on Mr. Ruiz. It is anticipated that Dr. Ruiz will base his testimony on his experience, training and treatment of Mr. Ruiz.

14. Dr. Fernando A. Moya  
17842 Northwest 2<sup>nd</sup> Street  
Pembroke Pines, Florida 33029

Although not a formally retained expert witness, the Plaintiff lists Dr. Moya in an abundance of caution. It is anticipated that Dr. Moya will testify regarding the care and treatment that he provided to Mr. Ruiz; the costs associated with that care; the extent of Mr. Ruiz's injuries; the anticipated need for future care; the costs associated with that future care; the permanency of Mr. Ruiz's injuries; and, the effect that those injuries may have on Mr. Ruiz. It is anticipated that Dr. Ruiz will base his testimony on his experience, training and treatment of Mr. Ruiz.

Plaintiff reserves the right to amend its Expert Witness list, without waiving any objections, as discovery is ongoing

\_\_\_\_\_ Respectfully submitted this 1<sup>st</sup> day of **March, 2012**

LAW OFFICES OF ROBERT RUBENSTEIN, P.A.  
Attorneys for Plaintiff  
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9350 South Dixie Highway  
Miami, Florida 33156  
Tel: (305)661-6000  
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By: \_\_\_\_\_  
ANTHONY J. SOTO  
Florida Bar No.: 816159



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA - MIAMI DIVISION

CIVIL CASE NO: 1:11-cv-20672-KMW

CARLOS RUIZ,

Plaintiff,

vs.

DIVANIS CABALLE RODRIGUEZ,

Defendant.

PLAINTIFF, CARLOS RUIZ'S FACT WITNESS LIST

COMES NOW the Plaintiff, CARLOS RUIZ, by and through their undersigned counsel and in compliance with this Court's Order Setting Schedule, Requiring Mediation, Referring Certain Matters to Magistrate Judge and Establishing Pre-Trial Procedures dated December 27<sup>th</sup>, 2011 and hereby files his Fact Witness List Pursuant to Local Rule 16.1(k) as follows:

1. Carlos Ruiz  
56 C Somerset Court  
Boundbrook, New Jersey
2. Carlos Ruiz, Sr.  
Plaintiff's Father
3. Veronica Lara  
Plaintiff's girlfriend
4. Dr. Stuart B. Krost (Treating physician)  
3618 Lantana Road, Suite 201  
Lake Worth, Florida 33462
5. Nile Lestrage, M.D. (Treating physician)  
1600 S. Federal Highway  
10<sup>th</sup> Floor  
Pompano Beach, Florida 33062
6. Keith L. Mullenger (Radiologist)  
CMI Plantation  
150 Northwest 70<sup>th</sup> Avenue  
Suite 1  
Plantation, Florida

7. Amir Hajisafari, D.C. (Treating physician)  
County Line Chiropractic (Plantation)  
199 North State Road 7  
Plantation, Florida 33317
8. Ronald I. Landau, M.D. (Treating physician)  
County Line Chiropractic (Plantation)  
199 North State Road 7  
Plantation, Florida 33317
9. William W. Atherton, D.C. (Treating physician)  
Chiropractic Radiology Consultants, P.,A.  
795 NE 127<sup>th</sup> Street  
North Miami, Florida 33161
10. Jane E. Bistline, M.D. (Treating physician)  
Pain Management  
2047 Palm Beach Lakes Boulevard  
Suite 300  
West Palm Beach, Florida 33409
11. Dr. Michael Wolford, D.O. (Treating physician)  
Columbia Hospital  
Emergency Department  
2201 45<sup>th</sup> Street  
West Palm Beach, Florida
12. David R. Gilchrist, DO (Treating physician)  
Broward General Medical Center  
1600 S. Andrew Avenue  
Fort Lauderdale, Florida 33316
13. Jagadeesh Reddy, M.D. (Treating physician)  
Broward General Medical Center  
1600 S. Andrew Avenue  
Fort Lauderdale, Florida 33316
14. Dr. Heldo Gomez (Treating physician)  
Florida Neurosurgery & Orthopaedic Institute  
7300 Northwest 5<sup>th</sup> Street  
Plantation, Florida 33317





**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**CIVIL CASE NO: 1:11-cv-20672-KMW**

**CARLOS RUIZ,**

**Plaintiff,**

**vs.**

**DIVANIS CABALLE RODRIGUEZ,**

**Defendant.**

**PLAINTIFF, CARLOS RUIZ'S EXPERT WITNESS  
PURSUANT TO LOCAL RULE 16.1(k)**

**COMES NOW** the Plaintiff, **CARLOS RUIZ**, by and through their undersigned counsel and in compliance with this Court's Order Setting Schedule, Requiring Mediation, Referring Certain Matters to Magistrate Judge and Establishing Pre-Trial Procedures dated December 27<sup>th</sup>, 2011 and hereby files his Disclosure of Witnesses Pursuant to Local Rule 16.1(k) as follows:

1. Dr. Stuart B. Krost  
3618 Lantana Road, Suite 201  
Lake Worth, Florida 33462

Although not a formally retained expert witness, the Plaintiff lists Dr. Krost in an abundance of caution. It is anticipated that Dr. Krost will testify regarding the care and treatment that he provided to Mr. Ruiz; the costs associated with that care; the extent of Mr. Ruiz's injuries; the anticipated need for future care; the costs associated with that future care; the permanency of Mr. Ruiz's injuries; and, the effect that those injuries may have on Mr. Ruiz. It is anticipated that Dr. Ruiz will base his testimony on his experience, training and treatment of Mr. Ruiz.

2. Nile Lestrangle, M.D.  
1600 S. Federal Highway, 10<sup>th</sup> Floor  
Pompano Beach, Florida 33062

Although not a formally retained expert witness, the Plaintiff lists Dr. Lestrangle in an abundance of caution. It is anticipated that Dr. Lestrangle will testify regarding the care and treatment that he provided to Mr. Ruiz; the costs associated with that care; the extent of Mr. Ruiz's injuries; the anticipated need for future care; the costs associated with that future care; the permanency of Mr. Ruiz's injuries; and, the effect that those injuries may have on Mr. Ruiz. It is anticipated that Dr. Ruiz will base his testimony on his experience, training and treatment of Mr. Ruiz.

3. Keith L. Mullenger  
CMI Plantation  
150 Northwest 70<sup>th</sup> Avenue, Suite 1  
Plantation, Florida

Although not a formally retained expert witness, the Plaintiff lists Dr. Mullenger in an abundance of caution. It is anticipated that Dr. Mullenger will testify regarding the Plaintiff's medical condition, injuries, causation, as well as his interpretation and professional opinion after reviewing Plaintiff's MRI films, the extent of Mr. Ruiz's injuries; the anticipated need for future care; the costs associated with that future care; the permanency of Mr. Ruiz's injuries; and, the effect that those injuries may have on Mr. Ruiz.

4. Amir Hajisafari, D.C.  
County Line Chiropractic (Plantation)  
199 North State Road 7  
Plantation, Florida 33317

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795 NE 127<sup>th</sup> Street  
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Although not a formally retained expert witness, the Plaintiff lists Dr. Atherton in an

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Pain Management  
2047 Palm Beach Lakes Boulevard  
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West Palm Beach, Florida 33409

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Columbia Hospital  
Emergency Department  
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Fort Lauderdale, Florida 33316

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11. Dr. Heldo Gomez  
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Columbia Hospital  
2201 45<sup>th</sup> Street  
West Palm Beach, Florida 33407

Although not a formally retained expert witness, the Plaintiff lists Dr. Mendel in an



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CIVIL CASE NO: 1:11-cv-20672-KMW

CARLOS RUIZ,

Plaintiff,

vs.

DIVANIS CABALLE RODRIGUEZ,

Defendant.

PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT

COMES NOW the Plaintiff, **CARLOS RUIZ**, by and through the undersigned counsel hereby files this Motion for Entry of Default Judgment against Defendant, **DIVANIS CABALLE RODRIGUEZ**, and as grounds therefore alleges:

1. This cause of action arises out of an automobile accident which occurred on August 8<sup>th</sup>, 2008 resulting in serious and disabling personal injury to the Plaintiff.
2. The Defendant had previously been represented by the Law Firm of Nicklaus and Associates, P.A. The Defendant's law firm was retained by the Defendant's insurance company, Federal Motor Carriers Risk Retention Group, Inc.
3. The Defendant, by and through his attorneys at the time, filed a Motion to Stay the Proceedings based upon a Liquidation Order which was in effect as to the Defendant's insurance carrier, Federal Motor Carriers Risk Retention Group, Inc. The Plaintiff opposed the motion and this Honorable Court denied Defendant's Motion to Stay the Proceedings and further provided Defendant time to seek new counsel and file a status report. This was outlined in this Honorable Court's Order dated December 27<sup>th</sup>, 2011.

CIVIL CASE NO: 1:11-cv-20672-KMW

4. The Defendant's counsel was also permitted to withdraw and as of this date, the Defendant has not retained new counsel.

5. On May 3<sup>rd</sup>, 2012, the undersigned counsel received a phone call from the Defendant which was the first contact Plaintiff has had with Defendant since this Honorable Court's Order dated December 27<sup>th</sup>, 2011.

6. Defendant advised that he cannot afford to mediate this case and also has not been provided and as such cannot afford counsel to represent him in this matter since his insurance carrier has entered into liquidation. Plaintiff's counsel did advise the Defendant that he would make this Honorable Court aware of the Defendant's situation.

7. It is Plaintiff's position that the Defendant has failed to abide by the Court Order dated December 27<sup>th</sup>, 2011 by failing to retain new counsel and to file a status report. Failure to abide by the Order may result in default judgment being entered and Plaintiff's respectfully request that a default judgment be entered in this cause. See *Wahl v. McIver*, 772 F.2d 1169, 1174 (11th Cir. 1985). ("The District Court has the authority to enter default judgment for failure to prosecute with reasonable diligence or to comply with this Order or Rules of Procedure").

8. As a direct and proximate result of the Defendant currently residing in Guttenberg, New Jersey and the limited contact counsel has had with the Defendant, a mediation has not been set and as to the representations made by Defendant, a mediation would not be meaningful.

WHEREFORE, the Plaintiff, **CARLOS RUIZ**, respectfully requests this Honorable Court enter a default judgment against Defendant and any and all other relief this Honorable Court deems appropriate.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 11-20672-CV-WILLIAMS

CARLOS RUIZ,

Plaintiff,

vs.

DIVANIS CABALLE RODRIGUEZ

Defendant.

---

**ORDER**

**THIS MATTER** is before the Court on Plaintiff's Motion for Default Judgment (DE 18). In the motion, Plaintiff indicates that Defendant has not agreed to participate in mediation as required by Court order (DE 13), which was required to have been completed by May 4, 2012. Additionally, it notes that although the Court required Mr. Rodriguez to indicate whether he intends to proceed with new counsel by January 30, 2012, no such notice has been filed.

Accordingly, this action is set for a hearing before the Honorable Kathleen M. Williams at the United States District Court, 400 North Miami Avenue, Room 11-3, Miami, Florida, on May 14, 2012 at 9:30 a.m. Defendant is **ORDERED TO SHOW CAUSE** as to why he should not be held in default for failing to abide by the Court's orders. Any party wishing to appear telephonically shall request to do so by contacting Chambers. Plaintiff's Motion for Default Judgment (DE 18) is **DENIED WITHOUT PREJUDICE** to renew at or after the aforementioned hearing.

**DONE AND ORDERED** in chambers in Miami, Florida, this 7th day of May, 2012.



KATHLEEN M. WILLIAMS  
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 11-20672-CV-WILLIAMS

CARLOS RUIZ,

Plaintiff,

vs.

DIVANIS CABALLE RODRIGUEZ

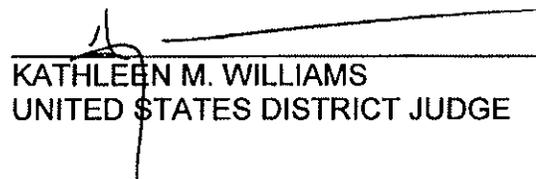
Defendant.

\_\_\_\_\_ /

ORDER

**THIS MATTER** is before the Court upon a *sua sponte* review of the record. In light of the Court's rulings and the representations made by the parties at the show cause hearing held on May 14, 2012, it is hereby **ORDERED AND ADJUDGED** that the parties are relieved of all remaining deadlines and this action shall be removed from the Court's trial calendar. On or before June 22, 2012, the parties shall file a joint status report regarding Mr. Rodriguez's ability to proceed in this action and provide proposed deadlines in anticipation of a revised scheduling order.

**DONE AND ORDERED** in chambers in Miami, Florida, this 14th day of May, 2012.

  
KATHLEEN M. WILLIAMS  
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record