

MEDREQ,REF_PTRL,WCT

**U.S. District Court
Southern District of Florida (Miami)
CIVIL DOCKET FOR CASE #: 1:11-cv-20672-KMW**

Ruiz v. Rodriguez	Date Filed: 02/28/2011
Assigned to: Judge Kathleen M. Williams	Jury Demand: Defendant
Referred to: Magistrate Judge William C. Turnoff	Nature of Suit: 350 Motor Vehicle
Case in other court: 11th Judicial Circuit in and for Miami- Dade, FL, 10-17389CA06	Jurisdiction: Diversity
Cause: 28:1332 Diversity-Notice of Removal	

Plaintiff

Carlos Ruiz

represented by **Anthony Joseph Soto**
Robert Rubenstein PA
9350 S Dixie Highway
Suite 1110
Miami, FL 33156
305-661-6000
Fax: 670-7505
Email: tony@robertrubenstein.com
ATTORNEY TO BE NOTICED

V.

Defendant

Divanis Caballe Rodriguez

represented by **Edward Randall Nicklaus**
Nicklaus & Hyatt
4651 Ponce De Leon Boulevard
Suite 200
Coral Gables, FL 33146
305-460-9888
Fax: 460-9889
Email: edwardn@nicklauslaw.com
TERMINATED: 01/04/2012
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/28/2011	<u>1</u>	NOTICE OF REMOVAL Filing fee \$ 350.00 receipt number 113C-3552052, filed by Divanis Caballe Rodriguez. (Attachments: # <u>1</u> Civil Cover Sheet) (Nicklaus, Edward) (Entered: 02/28/2011)
02/28/2011	2	Judge Assignment RE: Electronic Complaint to Senior Judge James Lawrence King (yha) (Entered: 02/28/2011)
02/28/2011	<u>3</u>	NOTICE by Divanis Caballe Rodriguez re <u>1</u> Notice of Removal of <i>Filing</i>

		(Nicklaus, Edward) (Entered: 02/28/2011)
02/28/2011	<u>4</u>	ANSWER and Affirmative Defenses to Complaint re the Notice of Removal with Jury Demand by Divanis Caballe Rodriguez.(Nicklaus, Edward) (Entered: 02/28/2011)
03/02/2011	<u>5</u>	SCHEDULING ORDER: Final Pretrial Conference set for 3/2/2012 10:45 AM in Miami Division before Senior Judge James Lawrence King. Jury Trial set for 5/7/2012 09:00 AM in Miami Division before Senior Judge James Lawrence King. Calendar Call set for 5/3/2012 02:00 PM in Miami Division before Senior Judge James Lawrence King. All hearings will be held in Courtroom II, Eleventh Floor. Discovery due by 12/28/2011. Motions due by 1/2/2012. Pretrial Stipulation due by 2/24/2012. Signed by Senior Judge James Lawrence King on 3/2/2011. (jw) (Entered: 03/02/2011)
09/06/2011	<u>6</u>	CLERK'S NOTICE that this cause will be TRANSFERRED to the calendar of District Judge Kathleen M. Williams on September 8, 2011. (vp) (Entered: 09/06/2011)
09/08/2011	<u>7</u>	ORDER REASSIGNING CASE to Judge Kathleen M. Williams for all further proceedings. Senior Judge James Lawrence King no longer assigned to case. Signed by Senior Judge James Lawrence King on 8/19/2011. (vp) (Entered: 09/08/2011)
09/09/2011	<u>8</u>	Case Reassignment to Paired Magistrate Judge William C. Turnoff. (vp) (Entered: 09/09/2011)
09/15/2011	<u>9</u>	MOTION to Stay <i>Proceedings</i> by Divanis Caballe Rodriguez. Responses due by 10/3/2011 (Nicklaus, Edward) (Entered: 09/15/2011)
10/03/2011	<u>10</u>	RESPONSE in Opposition re <u>9</u> MOTION to Stay <i>Proceedings</i> filed by Carlos Ruiz. (Soto, Anthony) (Entered: 10/03/2011)
10/13/2011	<u>11</u>	REPLY to Response to Motion re <u>9</u> MOTION to Stay <i>Proceedings and Incorporated Memorandum of Law</i> filed by Divanis Caballe Rodriguez. (Nicklaus, Edward) (Entered: 10/13/2011)
12/09/2011	<u>12</u>	MOTION to Withdraw as Attorney by Edward R. Nicklaus, Esq. and Nicklaus & Associates, P.A.. by Divanis Caballe Rodriguez. Responses due by 12/27/2011 (Attachments: # <u>1</u> Exhibit proposed Order)(Nicklaus, Edward) (Entered: 12/09/2011)
12/29/2011	<u>13</u>	ORDER SETTING SCHEDULE: Jury Trial set for 7/16/2012 before Judge Kathleen M. Williams, Calendar Call set for 7/10/2012 11:00 AM in Miami Division before Judge Kathleen M. Williams, Discovery due by 4/13/2012, Expert Discovery due by 4/13/2012, Fact Discovery due by 4/13/2012, Mediation Deadline 5/4/2012, In Limine Motions due by 6/21/2012, Dispositive Motions due by 5/4/2012, Pretrial Stipulation due by 6/21/2012. ORDER REFERRING CASE to Mediation. Mediation Deadline 5/4/2012. ORDER REFERRING CASE to Magistrate Judge William C. Turnoff for Pretrial Proceedings. Signed by Judge Kathleen M. Williams on 12/27/2011. (wc) (Entered: 12/29/2011)
01/04/2012	<u>14</u>	ORDER; denying <u>9</u> Motion to Stay; granting <u>12</u> Motion to Withdraw as

		Attorney. Attorney Edward Randall Nicklaus terminated; Status Report due 1/30/2012. Signed by Judge Kathleen M. Williams on 12/27/2011. (ral) (Entered: 01/04/2012)
03/01/2012	<u>15</u>	Witness List <i>Disclose Expert and Expert Witnesses</i> by Carlos Ruiz.. (Soto, Anthony) (Entered: 03/01/2012)
03/01/2012	<u>16</u>	Exhibit and Witness List <i>Fact Witness</i> by Carlos Ruiz.. (Soto, Anthony) (Entered: 03/01/2012)
03/01/2012	<u>17</u>	Witness List <i>EXPERT WITNESSES</i> by Carlos Ruiz.. (Soto, Anthony) (Entered: 03/01/2012)
05/04/2012	<u>18</u>	MOTION for Default Judgment by Carlos Ruiz. (Soto, Anthony) (Entered: 05/04/2012)
05/07/2012	<u>19</u>	ORDER denying without prejudice <u>18</u> Motion for Default Judgment. Show Cause Hearing is set for 5/14/2012 at 9:30am. 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. Signed by Judge Kathleen M. Williams on 5/7/2012. (yha) (Entered: 05/07/2012)
05/07/2012		Set Deadlines/Hearings Show Cause Hearing set for 5/14/2012 09:30 AM in Miami Division before Judge Kathleen M. Williams per <u>19</u> Order. (yha) (Entered: 05/07/2012)
05/14/2012	20	Minute Entry for proceedings held before Judge Kathleen M. Williams: Show Cause Hearing held on 5/14/2012. Order forthcoming. APPEARANCES: Anthony Soto, Esq., and Deendant Divanis Caballe Rodriguez. Court Reporter: Patricia Sanders, 305-523-5548 / Patricia_Sanders@flsd.uscourts.gov (ag) (Entered: 05/14/2012)
05/14/2012	<u>21</u>	STATUS REPORT ORDER(Status Report due by 6/22/2012.), Terminate all pending Deadlines and Hearings. Signed by Judge Kathleen M. Williams on 5/14/2012. (yha) (Entered: 05/14/2012)

PACER Service Center			
Transaction Receipt			
06/15/2012 10:45:46			
PACER Login:	v10006	Client Code:	
Description:	Docket Report	Search Criteria:	1:11-cv-20672-KMW
Billable Pages:	3	Cost:	0.30

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CIVIL CASE NO.:

CARLOS RUIZ,

Plaintiff,

vs.

DIVANIS CABALLE RODRIGUEZ,

Defendant.

DEFENDANT, DIVANIS CABALLE RODRIGUEZ'S NOTICE OF REMOVAL

COMES NOW, the Defendant, DIVANIS CABALLE RODRIGUEZ (hereinafter "RODRIGUEZ"), by and through undersigned counsel, and hereby files this its Notice of Removal of the above-styled cause pursuant to 28 U.S.C. § 1332 and § 1446, from the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, in which this action is pending, to the United States District Court, Southern District of Florida, Miami Division, and shows onto this Court the following:

1. The Plaintiff, Carlos Ruiz ("RUIZ"), originally filed an action for damages in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, CASE NO.: 10-17389 CA 06, on March 18, 2010.
2. The Plaintiff alleges that the Defendant, RODRIGUEZ, on or about August 8, 2008 negligently operated a motor vehicle at or near I-95 and State Road 934 in Deerfield Beach, Broward County, Florida so as to cause it to collide with a motor vehicle being operated by the Plaintiff. As a result thereof, Plaintiff claims to have suffered damages.
3. Written notice of the filing of this Notice of Removal, has been given to the Plaintiff

Case No.:

through his attorney of record, Anthony J. Soto, Esq., Law Offices of Robert Rubenstein, P.A., 9350 Financial Centre - Suite 1110, 9350 South Dixie Highway, Miami, Florida 33156, on this day.

4. A copy of this Notice of Removal has been filed with the Clerk of the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

5. Defendant, RODRIGUEZ, files with this Notice of Removal, a true and correct copies of all pleadings served and filed, including orders by the court, in the above-captioned state action.

(See Composite Exhibit "A.")

6. This Notice of Removal was filed by the Defendant, within thirty (30) days of the State Court denying "Defendant, Divanis Rodriguez's Limited Appearance and Motion to Dismiss for Lack of Jurisdiction" pursuant to Court Order of February 7, 2011. The Plaintiff's Complaint was filed on or about March 18, 2010, and a copy of Plaintiff's Complaint was served via substitute service upon Defendant, RODRIGUEZ, on or about August 18, 2010.

7. The United States Supreme Court in Murphy Bros. v. Michetti Pipe Stringing, Inc., 526 U.S. 344 (1999) held that the thirty-day period to remove a case from State Court to Federal Court starts to run from the time the Defendant is properly served with the summons and complaint under State law. Id. at p. 354. RODRIGUEZ asserts that pursuant to the *Murphy* Court's holding the thirty-day period to remove this cases did not begin to run during the time that RODRIGUEZ' motions to dismiss for lack of jurisdiction was pending before the State Court. See Phoenix Container, L.P. v. Sokoloff, 83 F. Supp. 2nd 928, 931 (N.D. Ill 2000) *citing* Murphy, *supra*. ("[t]he court reads the *Murphy* Court's holding to mean that the thirty-day clock did not begin to run during the time that defendants' motions to quash service were pending before the court. The clock would

Case No.:

not begin to run, therefore, until the state court determined that service was proper under state law, ... ”). As stated, said determination was made by the State Court on February 7, 2011.

8. Pursuant to 28 U.S.C. § 1332, this Court has jurisdiction over civil actions when the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest, costs, and attorney’s fees, and is between citizens of different states. This action is one in which this Court has original jurisdiction since it involves a controversy exclusively between citizens of different states and since the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest, costs and attorney’s fees. 28 U.S.C. § 1332.

9. At the commencement of this action, and at the time of filing this Notice of Removal, RODRIGUEZ, was a citizen of the State of New Jersey.

10. Upon information and belief, at the commencement of this action, and at the time of filing this Notice of Removal, the Plaintiff, RUIZ, was citizen of the State of Florida.

11. As RODRIGUEZ is a citizen of the State of New Jersey and not of the State of Florida, and the Plaintiff, RUIZ, is a citizen of the State of Florida, there is complete diversity of citizenship between all parties.

12. RODRIGUEZ and RUIZ are the only parties to this action. There are no other parties, Defendants, or otherwise in this action.

13. As of the time of the filing of this Notice of Removal, Defendant, RODRIGUEZ, has been served with a copy of the Plaintiff’s Summons and Complaint. Defendant, RODRIGUEZ, affirmatively consents to removal of this action to this Federal District Court though their undersigned counsel.

Case No.:

14. The Plaintiffs' Complaint filed in state court alleges damages in excess of \$15,000.00. In addition thereto, the Plaintiff, through his counsel of record, made a demand upon Defendant, RODRIGUEZ, in the amount of \$1,000,000.00, from which it can be ascertained that the case meets the requisite amount in controversy of \$75,000.00 and the case is removable under 28 U.S.C. § 1446(b) and § 1332(a). (See February 4, 2010 Demand, attached hereto as Exhibit "B.")

15. Based on the foregoing, the Defendant, RODRIGUEZ, submits that removal of this action is authorized under 28 U.S.C. § 1332 and § 1441.

WHEREFORE, the Defendant, DIVANIS CABALLE RODRIGUEZ, respectfully requests this Honorable Court take jurisdiction of this action, and that the removal of this cause to this Court is hereby effectuated.

/s/Edward R. Nicklaus
NICKLAUS & ASSOCIATES, P.A.
EDWARD R. NICKLAUS
Florida Bar No. 138399
Attorneys for Defendant
4651 Ponce de Leon Blvd., Suite 200
Coral Gables, Florida 33146
Telephone: 305-460-9888
Facsimile: 305-460-9889
edwardn@nicklauslaw.com

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was sent via CM/ECF & U.S. mail, on this 28 day of February, 2011 to: Anthony J. Soto, Esq., Law Offices of Robert Rubenstein, P.A., 9350 Financial Centre - Suite 1110, 9350 South Dixie Highway, Miami, Florida

Case No.:

33156.

/s/Edward R. Nicklaus
NICKLAUS & ASSOCIATES, P.A.
EDWARD R. NICKLAUS
Florida Bar No. 138399
Attorneys for Defendant
4651 Ponce de Leon Blvd., Suite 200
Coral Gables, Florida 33146
Telephone: 305-460-9888
Facsimile: 305-460-9889
edwardn@nicklauslaw.com

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 10-17389 CA 06

CARLOS RUIZ

Plaintiff,

vs.

DIVANIS CABALLE RODRIGUEZ,

Defendant.

*Due
2/28/11
[Signature]*

ORDER

This cause having come before this Honorable Court upon Defendant's Motion to Dismiss for Lack of Jurisdiction and for insufficient service of process, and the Court having been fully advised on the premises, it is hereupon:

ORDERED AND ADJUDGED that

1. Defendant's Motion to Dismiss for Lack of Jurisdiction and for insufficient service be, and the same is hereby **DENIED**.

2. Defendant shall have twenty (20) days from the date of this Order in which to file a responsive pleading.

DONE AND ORDERED in Chambers in Miami, Miami-Dade County, Florida this ____ day of **February, 2011**.

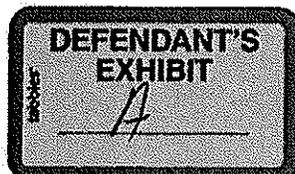
Conformed Copy

FEB 07 2011

Circuit Judge **David C. Miller**
Circuit Court Judge

Copies furnished to:

ANTHONY J. SOTO, ESQUIRE
EDWARD R. NICKLAUS, ESQUIRE



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IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL DISTRICT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 10-17389 CA 06

CARLOS RUIZ,

Plaintiff,

vs.

DIVANIS CABALLE RODRIGUEZ,

Defendant.

**DEFENDANT, DIVANIS RODRIGUEZ'S LIMITED APPEARANCE AND
MOTION TO DISMISS FOR LACK OF JURISDICTION**

COMES NOW, the Defendant, DIVANIS RODRIGUEZ, by and through undersigned counsel, and hereby moves this Honorable Court by special appearance, to dismiss this action on the grounds that this Court lacks jurisdiction, and as grounds, therefore, this Defendant would state:

1. Plaintiff filed a Complaint against Mr. Rodriguez on March 13, 2010.
2. There is lack of service of process in accordance with Florida law.
3. There is insufficient process in accordance with Florida law, and therefore this Court lacks jurisdiction.
4. There is insufficiency of service of process and therefore this Court further lacks jurisdiction.
5. There is improper of service of process and therefore this Court further lacks jurisdiction.

WHEREFORE, this action should be dismissed in its entirety against this Defendant.

sbj

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the above and foregoing was faxed & mailed, this 27th day of August, 2010 to: Anthony J. Soto, Esq., Law Offices of Robert Rubenstein, P.A., *Attorneys for Plaintiff*, 9350 S. Dixie Highway, Suite 1110, Miami, Florida 33156.

NICKLAUS & ASSOCIATES, P.A.
Attorneys for Defendant
4651 Ponce de Leon Boulevard
Suite 200
Coral Gables, Florida 33146
Phone: (305) 460-9888
Fax: (305) 460-9889

By: 

EDWARD R. NICKLAUS
Florida Bar No. 138399

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR
MIAMI
DADE COUNTY, FLORIDA

CARLOS RUIZ

Plaintiff(s),

Case No.: 10-17389-CA-06

vs.

VERIFIED RETURN OF SERVICE

DIVANIS CABALLE RODRIGUEZ

Defendant(s).



Pursuant to the request of **ROBERT RUBENSTEIN, P.A.**, Countywide Process Service and Investigations received this process on 08/02/2010 at 2:46 PM to be served upon:

DIVANIS CABALLE RODRIGUEZ

STATE OF FLORIDA
COUNTY OF MIAMI-DADE ss.



56588

I, **M. Rebeca Duharte**, depose and say that: I am authorized to serve this process in the circuit/county it was served in.

On 08/18/2010 at 8:20 PM, I served the within **ALIAS SUMMONS AND COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL, PLAINTIFF'S NOTICE OF FILING INITIAL INTERROGATORIES TO DEFENDANT, PLAINTIFF'S REQUEST FOR PRODUCTION TO DEFENDANT** on **DIVANIS CABALLE RODRIGUEZ** at 4653 SW 129TH AVENUE, MIAMI, FL 33175 in the manner indicated below:

SUB-SERVED by delivering a true copy of the complaint, petition, or other initial pleading or paper (if any) with this date and hour of service endorsed thereon by me, by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents and informing said person of the contents thereof, pursuant to F.S. 48.031(1)(a):

NAME: **ROLANDO RODRIGUEZ** TITLE/RELATION: **CO-RESIDENT**

Under penalty of perjury, I declare that I have read the foregoing affidavit and that the facts stated in it are true and correct. I am a Certified Process Server, in good standing, in the judicial circuit in which the process was served. I am over the age of eighteen, and have no interest in the above action.

X

Copy

M. Rebeca Duharte - Cert/ Appt#: 517
Notary Not Required Pursuant To F.S. 92.525.
Countywide Process Service & Investigations; 12260 SW 132nd Court, #113; Miami, FL 33186;
305-234-5858

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 10-17389 CA 06

CARLOS RUIZ

Plaintiff,

vs.

SUMMONS

DIVANIS CABALLE RODRIGUEZ,

Defendant.

8:20 PM
8-18-10
Went
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THE STATE OF FLORIDA:

To Each Sheriff of Said State:

YOU ARE HEREBY COMMANDED to serve this Summons and a copy of the Complaint in this action on Defendant, together with Interrogatories and Request for Production:

DIVANIS CABALLE RODRIGUEZ
4623 Southwest 129th Avenue
Miami, Florida 33175

Each Defendant is required to serve written defenses to the Complaint on Plaintiff's Attorney, to wit:

Anthony J. Soto, Esquire
LAW OFFICES OF ROBERT RUBENSTEIN, P.A.
9350 Financial Centre - Suite 1110
9350 South Dixie Highway
Miami, Florida 33156
Tel. (305) 661-6000
Fax. (786)230-2934

DATED ON: AUG 04 2010 of July, 2010

Clerk of Said Court

ALFRONZO NORTON

BY: _____

As Deputy Clerk
(Court Seal)

ck

IMPORTANT

A lawsuit has been filed against you. You have 20 calendar days after this summons is served on you to file a written response to the attached complaint with the clerk of this court. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be filed if you want the court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the court and also, a default will be entered against that Defendant for the relief demanded in the Complaint or Petition. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

If you choose to file a written response yourself, at the same time you file your written response to the court you must also mail or take a copy of your written response to the "Plaintiff/Plaintiff's Attorney" named below.

IMPORTANTE

Usted ha sido demandado legalmente. Tiene 20 dias, contados a partir del recibo de esta notificacion, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefonica no lo protegera. Si usted desea que el tribunal considere su defensa, debe presentar su respuesta por escrito, incluyendo el numero del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, podiese perder el caso y podria ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede usted consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guia telefonica.

Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, debera usted enviar por correo o entregar una copia de su respuesta a la persona denominada abajo como "Plaintiff/Plaintiff's Attorney" (Demandante o Abogado del Demandante).

IMPORTANT

Des poursuites judiciaires ont ete entreprises contre vous. Vous avez 20 jours consecutifs a partir de la date de l'assignation de cette citation pour déposer une reponse ecrite a la plainte ci-jointe aupres de ce tribunal. Un simple coup de telephone est insuffisant pour vous proteger. Vous etes obliges de déposer votre reponse ecrite, avec mention du numero de dossier ci-dessus et du nom des parties nommees ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne deposez pas votre reponse ecrite dans le delai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent etre saisis par la suite, sans aucun preavis ulterieur du tribunal. Il y a

d'autres obligations juridiques et vous pouvez requérir les services immédiats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez téléphoner à un service de référence d'avocats ou à un bureau d'assistance juridique (figurant à l'annuaire de téléphones).

Si vous choisissez de déposer vous-même une réponse écrite, il vous faudra également, en même temps que cette formalité, faire parvenir ou expédier une copie de votre réponse écrite au "Plaintiff/Plaintiff's Attorney" (Plaignant ou à son avocat) nommé ci-dessous.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 10-17389 CA 06

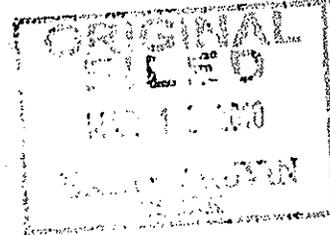
CARLOS RUIZ

Plaintiff,

vs.

DIVANIS CABALLE RODRIGUEZ,

Defendant.



COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

The Plaintiff, **CARLOS RUIZ**, by and through his undersigned counsel, sues the Defendant, **DIVANIS CABALLE RODRIGUEZ** and alleges:

GENERAL ALLEGATIONS

1. That this is an action for damages in excess of Fifteen Thousand (\$15,000.00) Dollars and within the jurisdictional limits of this Court.
2. At all times material hereto, the Plaintiff, **CARLOS RUIZ** was and is a resident of Broward County, Florida and was otherwise sui juris
3. At all times material hereto, the Defendant, **DIVANIS CABALLE RODRIGUEZ** (hereinafter "**RODRIGUEZ**") was and is a resident of Miami-Dade County, Florida.
4. On or about August 8th, 2008, **RODRIGUEZ** was the owner and operator of a 1990 Peterbilt truck bearing tag number 801KHD, VIN #1XP5029X4LN290805.
5. That on or about August 8th, 2008, Defendant **RODRIGUEZ**, was driving the aforementioned described vehicle at or near I-95 and State Road 934 in Deerfield Beach, Broward County, Florida. Defendant, **RODRIGUEZ**, carelessly and negligently operated and/or maintained the aforementioned vehicle so as to cause it to collide with a motor vehicle being operated by the

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Plaintiff, **CARLOS RUIZ**.

6. As a direct and proximate result of the negligence of Defendant, **RODRIGUEZ**, the Plaintiff, **CARLOS RUIZ**, suffered significant and severe bodily injury and resulting pain and suffering, disability, aggravation of pre-existing injuries, scarring and/or disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings and loss of ability to earn money in the future. The losses are either permanent or continuing in nature and the Plaintiff, **CARLOS RUIZ**, will suffer the losses in the future.

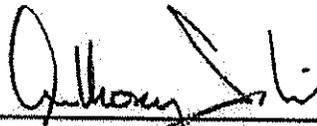
WHEREFORE, the Plaintiff, **CARLOS RUIZ**, does hereby demand judgment for damages, costs, and interest, from the Defendant, **RODRIGUEZ**, together with whatever relief the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

The Plaintiff, **CARLOS RUIZ**, further demand a trial by jury on all issues so triable as of right by jury.

Dated: March 16, 2010.

LAW OFFICES OF ROBERT RUBENSTEIN, P.A.
Attorneys for Plaintiff
9350 Financial Centre - Suite 1110
9350 South Dixie Highway
Miami, Florida 33156
Tel: (305)661-6000
Fax: (786)230-2934

By: 

ANTHONY J. SOTO
Florida Bar No.: 816159

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 10-17389 CA 06

CARLOS RUIZ

Plaintiff,

vs.

DIVANIS CABALLE RODRIGUEZ,

Defendant.

PLAINTIFF'S REQUEST FOR PRODUCTION
TO DEFENDANT: DIVANIS CABALLE RODRIGUEZ

The Plaintiff, CARLOS RUIZ, by and through his undersigned attorney and hereby gives notice of propounding Plaintiff's Request for Production to the Defendant, DIVANIS CABALLE RODRIGUEZ, to produce, within forty-five (45) days from the date of service, pursuant to the Florida Rules of Civil Procedure, the following for inspection and/or copying at the Law Offices of Robert Rubenstein, P.A., 9350 Financial Centre - Suite 1110, 9350 South Dixie Highway, Miami, Florida 33156:

1. Bills and/or estimates of repairs of vehicle and/or damage to property.
2. Any and all statements of the Plaintiff, Plaintiff's agents or employees, revealing knowledge of facts relevant and material to the claims and defenses in the instant litigation.
3. Any and all photographs, diagrams, charts of drawings pertaining to and acquired by the Defendant, as an alleged result of the accident giving rise to this suit.
4. Any and all insurance policies providing benefits or coverage to the Defendant for any claims injury or damage and the claim forms and records related to same for the subject accident or occurrence.

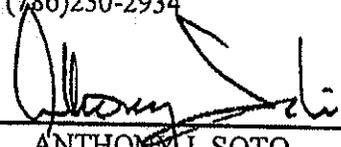
2/11

5. Any and all photographs and/or movies of the Plaintiff, resulting from surveillance and/or investigation of the Plaintiff.
6. Any transcript from traffic Court or any other Court involving the subject matter of the instant litigation and/or present name, address and telephone number of the court reporter present at said court.
7. Clear and legible copy of your driver's license.
8. Clear and legible copy of motor vehicle registration of the motor vehicle you were operating at the time of the accident which is the subject matter of this lawsuit.

I HEREBY CERTIFY that a true and correct copy of the foregoing was attached to the Complaint and Summons and served to the Defendant, **DIVANIS CABALLE RODRIGUEZ**.

Dated: March 14, 2010

LAW OFFICES OF ROBERT RUBENSTEIN, P.A.
Attorneys for Plaintiff
9350 Financial Centre - Suite 1110
9350 South Dixie Highway
Miami, Florida 33156
Tel: (305)661-6000
Fax: (786)230-2934

By: 

ANTHONY J. SOTO
Florida Bar No.: 816159

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 10-17089 CA 06

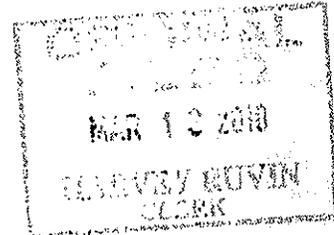
CARLOS RUIZ

Plaintiff,

vs.

DIVANIS CABALLE RODRIGUEZ,

Defendant.



**PLAINTIFF'S NOTICE OF FILING INITIAL INTERROGATORIES
TO DEFENDANT, DIVANIS CABALLE RODRIGUEZ**

The Plaintiff, CARLOS RUIZ, by and through his undersigned attorney, hereby gives notice of propounding Plaintiff's Interrogatories upon the Defendant to, DIVANIS CABALLE RODRIGUEZ, be answered within forty five (45) days from the date of service pursuant to the Florida Rules of Civil Procedure.

I HEREBY CERTIFY that a true and correct copy of the foregoing was attached to the Complaint and Summons and served to the Defendant, DIVANIS CABALLE RODRIGUEZ.

Dated: March 16, 2010.

LAW OFFICES OF ROBERT RUBENSTEIN, P.A.
Attorneys for Plaintiff
9350 Financial Centre - Suite 1110
9350 South Dixie Highway
Miami, Florida 33156
Tel: (305)661-6000
Fax: (786)230-2934

By: _____


ANTHONY J. SOTO
Florida Bar No: 816159

LAW OFFICES OF ROBERT RUBENSTEIN, P.A.

Website: www.robertrubenstein.com
E-mail: info@robertrubenstein.com

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

9350 South Dixie Highway, Suite 1110
Miami, Florida 33156
Miami-Dade (305) 661-6000
Fax (305) 670-7555

2 South University Drive, Suite 235
Plantation, Florida 33324
Broward (954) 661-6000
Fax (954) 476-2148

*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 107th 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.

Type of Bill	Medical Provider	Total Charges
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 Bistline, M.D.	\$425.00
MEDICAL	Nile Lestrangle, 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 indium 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

AFFIDAVIT

RE: File #: MF955547
Your Insured: Divanis Rodriguez

D/Loss: 08/08/2008
Our Client: Carlos Ruiz

STATE OF FLORIDA
COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared _____ who first being duly sworn, deposes & states as follows:

1. That at the time of the motor vehicle accident, in which Carlos Ruiz was injured, the only insurance available to me was the policy issued by Federal Motor Carriers, policy number CAT2007000501146 which provided Bodily Injury in the amount of \$1,000,000.00 per occurrence and assigned the above claim number.
2. _____ I /we had no other general liability umbrella or excess insurance or automobile insurance coverage which would be applicable to the subject accident in effect on the date of the accident.
 _____ I /we had the following other general liability umbrella or excess insurance or automobile insurance coverage which would be applicable to the subject accident in effect on the date of the accident:
 Company: _____
 Policy #: _____
3. _____ At the time of said accident, I was/we were not acting within the scope of any employment, nor was I/were we on a mission for compensation on behalf of any other person.
 _____ At the time of said accident, I was/we were acting within the scope of any employment, or I was/we were on a mission for compensation on behalf of any other person.
 Employer's name: _____
 Address: _____
 Phone #: _____

FURTHER AFFIANT SAYETH NOT

INSURED

INSURED DRIVER

STATE OF FLORIDA
COUNTY OF _____

SWORN TO AND SUBSCRIBED before me this _____ day of _____,
by _____, who is/are personally known to me or who have produced
_____ as identification, and who did take oath.

NOTARY PUBLIC
STATE OF FLORIDA

JS 44 (Rev. 2/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

<p>I. (a) PLAINTIFFS Carlos Ruiz</p> <p>(b) County of Residence of First Listed Plaintiff <u>Broward</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) Anthony J. Soto, Esq., Law Offices of Robert Rubenstein, 9350 S. Dixie Highway, Suite 1110, Miami, Florida 33156 - 786.230.2011</p>	<p>DEFENDANTS Divanis Caballe Rodriguez</p> <p>County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.</p> <p>Attorneys (If Known) <u>GUSTAVO A. MARTINEZ, Esq. and Edward R. Nicklaus, Esq., Nicklaus & Associates, P.A., 4651 Ponce De Leon Blvd., #200, Coral Gables, Florida 33146 - 305.460.9888</u></p>
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(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td>PTF</td> <td>DEF</td> <td></td> <td>PTF</td> <td>DEF</td> </tr> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input checked="" type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
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Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input checked="" type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p>PERSONAL INJURY - Med. Malpractice</p> <p><input type="checkbox"/> 362 Personal Injury - Med. Malpractice</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 610 Agriculture</p> <p><input type="checkbox"/> 620 Other Food & Drug</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 630 Liquor Laws</p> <p><input type="checkbox"/> 640 R.R. & Truck</p> <p><input type="checkbox"/> 650 Airline Regs.</p> <p><input type="checkbox"/> 660 Occupational Safety/Health</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Mgmt. Relations</p> <p><input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 463 Habeas Corpus-Alien Detainee</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395f)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS - Third Party 26 USC 7609</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 810 Selective Service</p> <p><input type="checkbox"/> 850 Securities/Commodities Exchange</p> <p><input type="checkbox"/> 875 Customer Challenge 12 USC 3410</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 892 Economic Stabilization Act</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 894 Energy Allocation Act</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Re-filed- (see VI below)

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

a) Re-filed Case YES NO

b) Related Cases YES NO

(See instructions second page): JUDGE _____ DOCKET NUMBER _____

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

This is a diversity action pursuant to 28 USC 1332, as plaintiff and defendant are citizens of different states and the claim is in excess of \$75,000

LENGTH OF TRIAL via 5 days estimated (for both sides to try entire case)

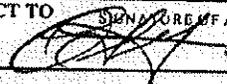
VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 75,000.00

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD: 

DATE: February 25, 2011

FOR OFFICE USE ONLY

AMOUNT _____ RECEIPT # _____ IFF _____

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.

NOTICE OF FILING

COMES NOW, the Defendant, DIVANIS CABALLE RODRIGUEZ, a citizen of the State of New Jersey, by and through undersigned counsel, and hereby certifies a copy of the Notice of Removal has been filed in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No. 10-17389 CA 06, as of the date stamped on the Notice of Removal.

/s/Edward R. Nicklaus
NICKLAUS & ASSOCIATES, P.A.
EDWARD R. NICKLAUS
Florida Bar No. 138399
Attorneys for Defendant
4651 Ponce de Leon Blvd., Suite 200
Coral Gables, Florida 33146
Telephone: 305-460-9888
Facsimile: 305-460-9889
edwardn@nicklauslaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via CM/ECF & U.S. mail to: Anthony J. Soto, Esq., Law Offices of Robert Rubenstein, P.A., 9350 Financial Centre - Suite 1110, 9350 South Dixie Highway, Miami, Florida 33156, on this 28 day of

Case No.: 1:11-cv-20672-JLK

February, 2011.

/s/Edward R. Nicklaus
NICKLAUS & ASSOCIATES, P.A.
EDWARD R. NICKLAUS
Florida Bar No. 138399
Attorneys for Defendant
4651 Ponce de Leon Blvd., Suite 200
Coral Gables, Florida 33146
Telephone: 305-460-9888
Facsimile: 305-460-9889
edwardn@nicklauslaw.com

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.

**DEFENDANT, DIVANIS RODRIGUEZ'S ANSWER AND AFFIRMATIVE DEFENSES
AND DEMAND FOR JURY TRIAL**

COMES NOW, the Defendant, DIVANIS RODRIGUEZ, by and through undersigned counsel, and hereby files this his Answer and Affirmative Defenses to Plaintiff, CARLOS RUIZ's Complaint as follows:

1. Admitted for jurisdictional purposes only.
2. Without knowledge therefore denied.
3. Denied.
4. Denied.
5. Denied
6. Denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

This case is subject to the requirements of the Florida Tort Reform Act.

Case No.: 1:11-cv-20672-JLK

SECOND AFFIRMATIVE DEFENSE

The Plaintiff, CARLOS RUIZ's, own negligence solely caused or contributed to the accident, injuries, and damages because, *inter alia*, he acted in such a careless and negligent manner, and such contributory fault and comparative negligence chargeable to CARLOS RUIZ diminishes proportionally any amount awarded as economic and non-economic damages against this Defendant for any injury as otherwise and more fully provided pursuant to Florida Statutes §768.81.

THIRD AFFIRMATIVE DEFENSE

The Plaintiff, CARLOS RUIZ was comparatively negligent in failing to use and/or use properly a fully operational seatbelt and said comparative negligence was a proximate cause or substantially contributed to CARLOS RUIZ's injuries and his damages, if any, must be reduced as a result thereof.

FOURTH AFFIRMATIVE DEFENSE

To the extent that the Uniform Contribution Among Joint Tortfeasors Act is applicable under Florida Statutes §768.31, this Defendant is entitled to a set-off or a reduction of the claim against him to the extent of an amount stipulated by the release or a covenant not to sue or, in the amount of the consideration paid for it, which ever is the greater.

FIFTH AFFIRMATIVE DEFENSE

This Defendant avers and alleges that it is entitled to an apportionment of damages in accordance with Florida Statutes § 768.81. Any judgment entered against the Defendant must be based on the fault, if any, of this Defendant, and not on the basis of the doctrine of joint and several liability.

SIXTH AFFIRMATIVE DEFENSE

This Defendant is entitled to list any and all parties who may be responsible for the happening of this accident on the jury verdict form in compliance with *Fabré v. Marin*, 623 So. 2d 1182 (Fla. 1993). As additional parties become known to the Defendant in the course of further discovery, Defendant reserves the right to add additional parties to the jury verdict form as they become known to the Defendant in the course of further discovery.

SEVENTH AFFIRMATIVE DEFENSE

The damages of which the Plaintiff, CARLOS RUIZ, complains, were brought about by an intervening, independent, and unforeseeable cause over which this Defendant had no control and for which this Defendant cannot be held liable for damages.

EIGHTH AFFIRMATIVE DEFENSE

This Defendant avers and alleges that any action and/or negligence on its part, if any there be, was not the proximate cause of the injuries of the Plaintiff, CARLOS RUIZ, and therefore, the Plaintiff is barred from recovery.

NINTH AFFIRMATIVE DEFENSE

The proximate cause of the subject accident was the result of third parties over whom this Defendant had no supervision or control.

TENTH AFFIRMATIVE DEFENSE

This Defendant is entitled to a reduction of the amount of any such award recovered by Plaintiff, CARLOS RUIZ, in this action by the total of all amounts which have been paid for the benefit of the Plaintiff, or which are otherwise available to him, from all collateral sources. Such

Case No.: 1:11-cv-20672-JLK

reduction shall be off-set to the extent of any amount which has been paid, contributed or forfeited by, or on behalf of, the Plaintiff to secure his right to any collateral source benefit which he has received as a result of his alleged injury. This set-off is pursuant to Fla. Stat. § 768.76, and any other applicable laws.

ELEVENTH AFFIRMATIVE DEFENSE

The Plaintiff, CARLOS RUIZ's, alleged injuries were totally unforeseeable and this Defendant had no duty or opportunity to prevent same.

TWELFTH AFFIRMATIVE DEFENSE

This Defendant is entitled to a set-off pursuant to Fla. Stat. § 627.736(3), Florida's PIP Statute, for all benefits paid or payable.

THIRTEENTH AFFIRMATIVE DEFENSE

This Defendant reserves his right to amend his Affirmative Defenses, as discovery progresses and this Defendant has had an opportunity to receive and review discovery from the Plaintiff or any other parties who may be added to this matter, depose the Plaintiff and witnesses or otherwise conduct discovery, thereby making additional affirmative defenses and avoidances necessary.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, were caused by an unavertable event which relieves this Defendant of all liability in this case.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claim(s) for damages, if any, against this Defendant were released or an accord and satisfaction was agreed to by the Plaintiff and therefore no claims can be asserted against this

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Defendant.

WHEREFORE, the Defendant, DIVANIS CABALLE RODRIGUEZ, respectfully requests this Honorable Court enter a Judgment in his favor and against the Plaintiff, CARLOS RUIZ.

Defendant further demands a trial by jury of all issues so triable.

/s/Edward R. Nicklaus
NICKLAUS & ASSOCIATES, P.A.
EDWARD R. NICKLAUS
Florida Bar No. 138399
Attorneys for Defendant
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Coral Gables, Florida 33146
Telephone: 305-460-9888
Facsimile: 305-460-9889
edwardn@nicklauslaw.com

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was sent via facsimile & U.S. mail, on this 28 day of February, 2011 to: Anthony J. Soto, Esq., Law Offices of Robert Rubenstein, P.A., 9350 Financial Centre - Suite 1110, 9350 South Dixie Highway, Miami, Florida 33156.

/s/Edward R. Nicklaus
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EDWARD R. NICKLAUS
Florida Bar No. 138399
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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.

DEFENDANT, DIVANIS CABALLE RODRIGUEZ'S
MOTION TO STAY PROCEEDINGS

COMES NOW, the Defendant, DIVANIS CABALLE RODRIGUEZ, by and through undersigned counsel, pursuant to Fed.R.Civ.P. 7(b) and Rule 7.1(a) of the District Court for the Southern District of Florida, and hereby submits this his Motion to Stay Proceedings, and in support thereof, states the following:

1. This case is based on a personal injury action which resulted from a motor vehicle accident occurring on or about August 8, 2008. (See Plaintiff's Complaint for Damages and Demand for Jury Trial, ¶ 5.)

2. At the time of the accident subject of the lawsuit herein, the Defendant, DIVANIS CABALLE RODRIGUEZ, was insured pursuant to Policy No. CAT2007-0005-01-146, issued to Defendant by Federal Motor Carriers Risk Retention Group (hereinafter "FMC-RRG"), a Delaware domiciled insurer and risk retention entity. Pursuant to this policy of insurance, FMC-RRG had a

duty and obligation to defend DIVANIS CABALLE RODRIGUEZ for valid claims arising under the policy while in effect.

3. On August 24, 2011, undersigned counsel for Defendant was notified that the insurer, FMC-RRG, had been declared impaired by a Court of competent jurisdiction in the State of Delaware, and that a Liquidation and Injunction Order had been entered in this regard. (A copy of the Order is attached hereto as Exhibit "A."). In effect, the impairment and liquidation of FMC-RRG has left the Defendant exposed and without a funded defense in this litigation.

4. The Order, in part, provides that persons having notice of the Order,

"[a]re hereby enjoined and restrained from instituting or further prosecuting any action at law or in equity, or proceeding with any pretrial conference, trial, application for judgment or proceedings on judgment or settlements and such action at law, in equity, special or other proceedings in which FMC-CAPTIVE and/or FMC-RRG are obligated to defend themselves or any other party for a period of 180 days from the date hereof." (Exhibit "A", ¶ 11).

5. Based upon the representations above, and the legal argument to follow, Defendant requests the entry of an Order staying the present action for a period of at least 180 days. The relief sought by the Defendant here is based on Fed.R.Civ.P. 7(b) and Rule 7.1(a) of the District Court for the Southern District of Florida, and the following:

Legal Argument

The McCarran-Ferguson Act, 15, U.S.C. § 1011-1015, mandates that regulation of the insurance industry be left to the individual states. See, *Levy v. Lewis*, 635 F.2d 960, 963 (2nd Cir. 1980). Thus, any administrative or judicial scheme erected by the individual states to regulate insurance companies, including implementation of liquidation proceedings, operates pursuant to an

express federal policy of noninterference in insurance matters. *Id.* See also, *Universal Marine Insurance Company, Ltd., v. Beacon Insurance Company, et al.*, 768 F.2d 84, 88 (4th Cir. 1985) (“A federal court cannot interfere with property subject to the jurisdiction of state courts in insolvency proceedings. This is true even when the federal action commenced prior to the state insolvency proceedings.”)

The Eleventh Circuit has recognized that federal policy, specifically 15 U.S.C. § 1012, directs that control over the insurance business remains in the hands of the states, and that orderly liquidation of an insurer requires noninterference with state court orders. See, *Anshutz v. Ray McDermott Company, Inc., et al.*, 642 F.2d 94 (5th Cir. 1981). Accordingly, Defendant prays this Court take notice of the Liquidation and Injunction Order issued in the Court of Chancery of the State of Delaware on August 17, 2011, and thereupon grant a stay of the present action for a period of at least 180 days while liquidation of Defendant's insurance carrier progresses.

WHEREFORE, the Defendant, DIVANIS CABALLE RODRIGUEZ, respectfully moves this Honorable Court for the entry of an Order to stay the proceedings in the instant action for a period of 180 days while liquidation of Defendant's insurance carrier progresses.

/s/Edward R. Nicklaus
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edwardn@nicklauslaw.com
ATTORNEY FOR DEFENDANT

S.D. Fla. L.R. 7.1(a)(3) Certification

Movant's counsel has consulted counsel of record for Plaintiff, CARLOS RUIZ, Anthony Soto, Esq., in a good faith effort to resolve the issue raised in this motion and have been unable to do so.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing has been furnished via CM/ECF, this 15 day of September, 2011, 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.

/s/Edward R. Nicklaus
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ATTORNEY FOR DEFENDANT



GRANTED

EFiled: Aug 17 2011 11:17 AM EDT
Transaction ID 39344728
Case No. 6712-VCP

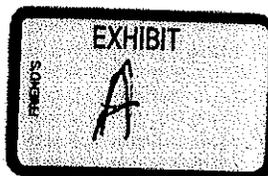


IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF:)	
)	
STATE OF DELAWARE ex rel.)	
THE HONORABLE KAREN WELDIN STEWART,)	
CIR-ML, Insurance Commissioner of the)	
State of Delaware,)	
)	
Petitioner,)	
)	
v.)	C.A. No. 6712-VCP
)	
FMC INSURANCE COMPANY, INC., a)	
Delaware domestic special purpose)	
captive insurance company; and)	
)	
FEDERAL MOTOR CARRIERS RISK RETENTION)	
GROUP, INC., a Delaware domestic risk)	
retention group,)	
)	
Respondents.)	

STIPULATED LIQUIDATION AND INJUNCTION ORDER WITH BAR DATE

WHEREAS, the Honorable Karen Weldin Stewart, CIR-ML, in her capacity as the Insurance Commissioner of the State of Delaware (the "Commissioner"), has filed a petition, pursuant to 18 Del. C. §5901, et seq., ch. 69 and ch. 80, seeking the entry of a Liquidation and Injunction Order with Bar Date concerning FMC Insurance Company, Inc., a Delaware domestic special purpose captive insurance company (hereinafter, "FMC-CAPTIVE"), and Federal Motor Carriers Risk Retention Group, Inc., a Delaware domiciled risk retention group (hereinafter, "FMC-RRG"), both of which were incorporated in Delaware on May 9, 2007, and operated



pursuant to Certificates of Authority issued on May 7, 2007, by the Delaware Department of Insurance;

WHEREAS, the Receiver has provided the Court with evidence sufficient to support the conclusion that FMC-CAPTIVE and FMC-RRG are impaired; both have failed to correct their respective impairments of capital or surplus or both; and both have consented to the entry of a Liquidation and Injunction Order with Bar Date through unanimous consent of the directors of the respective companies present at a duly scheduled special meeting;

WHEREAS, this Court finds that sufficient cause exists for the liquidation of the Respondents, FMC-CAPTIVE and FMC-RRG, pursuant to 18 Del. C. §§5906 and 5905, as well as 18 Del. C. ch. 59, 69 and 80, and for the entry of a Liquidation and Injunction Order with Bar Date concerning FMC-CAPTIVE and FMC-RRG; and

WHEREAS, a formal hearing on the Commissioner's Petition is not necessary due to the consent of FMC-CAPTIVE and FMC-RRG to the relief requested by the Commissioner and the waiver by FMC-CAPTIVE and FMC-RRG of a formal hearing on the Petition;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED BY THE COURT as follows:

1. FMC-CAPTIVE and FMC-RRG are hereby each declared to be impaired such that the entry of a Liquidation and Injunction Order with the Establishment of a Bar Date, pursuant to 18 *Del. C.* §§ 5905(1) and 5906, is proper on the basis of such impairment.

2. Pursuant to 18 Del. C. ch. 59, 69, and with respect to FMC-RRG, ch. 80, the Commissioner and her successors in office are hereby appointed as the receiver of FMC-CAPTIVE and FMC-RRG (hereinafter the "Receiver").

3. Pursuant to 18 Del. C. ch. 59, 69, and 80, including but not limited to §5911(a), the Receiver shall forthwith conduct the business of FMC-CAPTIVE and FMC-RRG pursuant to the terms of this Order and immediately take exclusive possession and control of, and is hereby vested with all right, title and interest in, of or to, all of the property of FMC-CAPTIVE and FMC-RRG including, without limitation, all of their respective and/or joint assets, contracts, rights of action, books, records, bank accounts, certificates of deposits, collateral securing obligations to, or for the benefit of FMC-CAPTIVE and FMC-RRG or any trustee, bailee or any agent acting for or on behalf of FMC-CAPTIVE and FMC-RRG (collectively, the "Trustees"), securities or other funds, and all real or personal property of any nature of FMC-CAPTIVE and FMC-RRG

including, without limitation, furniture, equipment, fixtures and office supplies, wherever located, and including such property of FMC-CAPTIVE and FMC-RRG or collateral securing obligations to, or for the benefit of, FMC-CAPTIVE and FMC-RRG or any Trustee thereof that may be discovered hereafter, and all proceeds of or accessions to any of the foregoing, wherever located, in the possession, custody or control of FMC-CAPTIVE and FMC-RRG or any Trustee therefore (collectively, the "Assets").

4. The Receiver may change to her own name as Receiver or to the name of the estates of FMC-CAPTIVE and/or FMC-RRG, the name of any of FMC-CAPTIVE and FMC-RRG's accounts, funds or other property or assets held with any bank, savings and loan association or other financial institution, and may withdraw such funds, accounts and other property or assets from such institutions or take any lesser action necessary for the proper conduct of this liquidation proceeding.

5. The Receiver is hereby directed to continue in her examination of the Assets, business and affairs of FMC-CAPTIVE and FMC-RRG and to take such steps to liquidate the companies pursuant to the provisions of Chapters 59, 69 and 80 of Title 18 of the Delaware Code as she deems necessary.

The Receiver is further authorized to take such actions as the nature of this cause and interests of the policyholders, creditors and stockholders of FMC-CAPTIVE and FMC-RRG and the public may require, subject to Court approval when and as required by 18 Del. C. ch. 59.

6. The Receiver's right, title and interest in and to the Assets shall continue until further order of the Court and she is hereby authorized to deal with the Assets, business and affairs of FMC-CAPTIVE and FMC-RRG including, without limitation, the right to sue, defend, and continue to prosecute suits or actions already commenced by or for FMC-CAPTIVE and FMC-RRG, or for the benefit of FMC-CAPTIVE and FMC-RRG's members, policyholders, cedants, creditors and stockholders in the courts and tribunals, agencies or arbitration panels for this State and other states and jurisdictions in her name as the Insurance Commissioner of the State of Delaware, or in the name of FMC-CAPTIVE and/or FMC-RRG.

7. The Receiver is hereby vested with the right, title and interest in and to all funds recoverable under treaties and agreements of reinsurance heretofore entered into by FMC-CAPTIVE and FMC-RRG as the ceding insurer or as the assuming insurer, and all reinsurance companies involved with FMC-CAPTIVE and FMC-RRG are enjoined and

restrained from making any settlements with any claimant or policyholder of FMC-CAPTIVE and FMC-RRG other than with the express written consent of the Commissioner as Receiver, except as permitted by cut-through agreements or endorsements which were issued to the policyholder, which were properly executed before the date of this Petition, which comply in all respects with 18 Del. C. §914, as amended by 72 Del. Laws c. 405, and which were approved by the Delaware Insurance Department if such approval was required. The amounts recoverable by the Receiver from any reinsurer of FMC-CAPTIVE and FMC-RRG shall not be reduced or diminished as a result of this receivership proceeding or by reason of any partial payment or distribution on a reinsured policy, contract or claim, and each such reinsurer of FMC-CAPTIVE and FMC-RRG is hereby enjoined and restrained from terminating, canceling, failing to extend or renew, or reducing or changing coverage under any reinsurance policy, reinsurance contract or letter of credit. The Receiver may terminate or rescind any reinsurance policy or contract that is contrary to the best interests of the receivership.

8. FMC-CAPTIVE and/or FMC-RRG, their officers, directors, agents, servants and employees and all other persons or entities, including but not limited to banks,

brokerage houses, reinsurers and cedants, having in their possession Assets or possible Assets and/or having notice of these proceedings or of this Order are hereby enjoined and restrained from transacting any business of, or on behalf of, FMC-CAPTIVE and FMC-RRG or selling, transferring, destroying, wasting, encumbering or disposing of any of the Assets, without the prior written permission of the Receiver or until further Order of this Court. This prohibition includes, without limitation, Assets or possible Assets pertaining to any business transaction between FMC-CAPTIVE and/or FMC-RRG and any of said parties. No actions concerning, involving, or relating to such Assets or possible Assets may be taken by any of the aforesaid persons or entities enumerated herein, without the express written consent of the Receiver, or until further Order of this Court.

9. Except as otherwise indicated elsewhere in this Order or except as excluded by express written notice provided by the Receiver, all agents, brokers and all other persons or entities holding Assets of, or on behalf of, FMC-CAPTIVE and FMC-RRG shall forthwith file an accounting of those Assets with the Receiver, regardless of whether such persons or entities dispute the Receiver's entitlement

to such Assets, and shall within ten (10) days of the entry of this Order, turn those Assets over to the Receiver.

10. All officers, directors, agents, servants and employees of FMC-CAPTIVE and FMC-RRG, and all other persons and entities having notice of these proceedings or of this Order, are hereby prohibited from instituting or further prosecuting any action at law or in equity or in other proceedings against FMC-CAPTIVE and FMC-RRG, the Receiver, the Deputy Receiver(s), or the Designees in connection with their duties as such, or from obtaining preferences, judgments, attachments or other like liens or encumbrances, or foreclosing upon or making any levy against FMC-CAPTIVE and FMC-RRG or the Assets, or exercising any right adverse to the right of FMC-CAPTIVE and FMC-RRG to or in the Assets, or in any way interfering with the Receiver, the Deputy Receiver(s) or the Designees either in their possession and control of the Assets or in the discharge of their duties hereunder. Notwithstanding the foregoing, nothing set forth herein shall be deemed a waiver by FMC-CAPTIVE and FMC-RRG and all of their respective affiliates, directors, officers, employees and agents to assert claims or requests for additional relief and/or objections and/or defenses to any claims or additional requests for relief arising out of or in connection with the subject

proceedings. Further, nothing herein shall be deemed a waiver by the Receiver, any Deputy Receiver(s), and their agents, servants, and duly authorized representatives of any claims, requests for additional relief and/or objections and/or defenses to any claims or additional requests for relief arising out of or in connection with the subject proceedings, and nothing set forth herein shall constitute an admission by the Receiver, Deputy Receiver or the Designees as to any of the averments or denials in the Respondents' response to the Petition. Further, Nothing herein shall waive, alter or affect any immunities, defenses or rights available to the Receiver as a matter of law.

11. All officers, directors, agents, servants and employees of FMC-CAPTIVE and FMC-RRG, and all other persons or entities having notice of these proceedings or of this Order, are hereby enjoined and restrained from instituting or further prosecuting any action at law or in equity, or proceeding with any pretrial conference, trial, application for judgment or proceedings on judgment or settlements and such action at law, in equity, special or other proceedings in which FMC-CAPTIVE and/or FMC-RRG are obligated to defend themselves or any other party for a period of 180 days from the date hereof. Notwithstanding the foregoing, nothing

set forth herein shall be deemed a waiver by FMC-CAPTIVE and FMC-RRG and all of their respective affiliates, directors, officers, employees and agents to assert claims or requests for additional relief and/or defenses to any claims or additional requests for relief arising out of or in connection with the subject proceedings. Further, nothing herein shall be deemed a waiver by the Receiver, any Deputy Receiver(s), and their agents, servants, and duly authorized representatives of any claims, requests for additional relief and/or objections and/or defenses to any claims or additional requests for relief arising out of or in connection with the subject proceedings, and nothing set forth herein shall constitute an admission by the Receiver, Deputy Receiver or the Designees as to any of the averments or denials in the Respondents' response to the Petition.

12. All persons having possession of any lists of policyholders of FMC-CAPTIVE and/or FMC-RRG are directed to deliver all such lists to the Receiver immediately. All persons are enjoined from using any such lists or any information contained therein without the consent of the Receiver.

13. The Receiver shall terminate and cancel all in-force insurance policies issued by FMC-CAPTIVE and/or FMC-RRG as soon as possible after entry of this Order, and the

Receiver shall notify promptly all policyholders of such policy termination and cancellation by First Class Mail to the last known address of such policyholders. Nothing herein shall extend coverage for any policyholder if such policyholder is in default of their obligation to pay premium or if a policy has already been terminated, been cancelled, or expired.

14. All persons and entities are hereby enjoined and restrained from asserting any claim against the Receiver of FMC-CAPTIVE and FMC-RRG, the Deputy Receiver(s), or the Designees in connection with their duties as such, or against the Assets, except insofar as such claims are brought in these liquidation proceedings of FMC-CAPTIVE and FMC-RRG pursuant to 18 Del. C. ch. 59.

15. ANY AND ALL CLAIMS NOT FILED WITH THE RECEIVER ON OR BEFORE CLOSE OF BUSINESS ON FRIDAY, SEPTEMBER 28, 2012 (THE "BAR DATE") SHALL BE BARRED FROM CLASSES III THROUGH VI, AS THOSE CLASSES ARE DEFINED IN 18 DEL. C. §§5918(e)(3) THROUGH (e)(6) AND SHALL NOT RECEIVE ANY DISTRIBUTIONS FROM THE GENERAL ASSETS OF THE ESTATES OF FMC-CAPTIVE AND/OR FMC-RRG UNLESS AND UNTIL ASSETS BECOME AVAILABLE FOR A DISTRIBUTION TO CLASS VII CLAIMANTS AS DEFINED IN 18 DEL. C. §5918(e)(7). IN ORDER FOR CLAIMS FILED WITH THE RECEIVER BY THE SEPTEMBER 28, 2012, BAR DATE TO QUALIFY FOR

CLASSIFICATION IN PRIORITY CLASSES III THROUGH VI, AS
DEFINED ABOVE, THE CLAIM MUST BE LIQUIDATED AND ABSOLUTE.
IF A CONTINGENT CLAIM IS NOT LIQUIDATED AND ABSOLUTE BY THE
BAR DATE, SUCH CLAIM MAY STILL QUALIFY AS A LATE-FILED
CLAIM IN CLASS VII AS DEFINED IN 18 DEL. C. §5918(e)(7).
THIS BAR DATE SHALL SUPERSEDE ANY APPLICABLE STATUTES OF
LIMITATIONS OR OTHER STATUTORY OR CONTRACTUAL TIME LIMITS
WHICH HAVE NOT YET EXPIRED WHETHER ARISING UNDER DELAWARE
LAW, UNDER THE APPLICABLE LAWS OF ANY OTHER JURISDICTION,
OR UNDER A CONTRACT WITH FMC-CAPTIVE AND/OR FMC-RRG, AND
SUCH CLAIMS MUST STILL BE REPORTED TO THE RECEIVER BY THE
SEPTEMBER 28, 2012, BAR DATE. ALL CLAIMANTS SHALL IDENTIFY
ON A PROOF OF CLAIM FORM SUPPLIED BY THE RECEIVER WHETHER
THE CLAIM IS BEING MADE AGAINST FMC-CAPTIVE, FMC-RRG, OR
BOTH, AND SHALL ATTACH TO SUCH PROOF OF CLAIM DOCUMENTATION
SUFFICIENT TO SUPPORT SUCH CLAIM.

16. The Receiver may, in her discretion, reject any executory contract to which FMC-CAPTIVE and/or FMC-RRG are parties.

17. The Receiver may, in her discretion, appoint one or more consultants or other persons to serve as Deputy Receiver to assist the Receiver in accomplishing the directives of this Order. The Deputy Receiver(s) shall serve at the pleasure of the Receiver and, subject to the

approval of the Receiver, shall be entitled to exercise all of the powers and authorities vested in the Receiver pursuant to this Order and applicable law.

18. The Receiver may employ or continue to employ and fix the compensation of such deputies, counsel, clerks, employees, accountants, actuaries, consultants, assistants and other personnel (collectively, the "Designees") as considered necessary, and all compensation and expenses of the Receiver, the Deputy Receiver(s) and the Designees and of examining FMC-CAPTIVE and FMC-RRG, preparing for and initiating this proceeding, and of taking possession of FMC-CAPTIVE and FMC-RRG and conducting this proceeding shall be paid out of the funds and Assets of FMC-CAPTIVE and FMC-RRG as administrative expenses under 18 Del. C. §5913(f). The Receiver or her duly appointed Deputy Receiver may also retain those of FMC-CAPTIVE and FMC-RRG's current management personnel and other employees as Designees as she in her discretion determines would facilitate the liquidation of FMC-CAPTIVE and FMC-RRG, provided, however, that no current management personnel and other employees shall be considered Designees unless and until the Receiver shall have agreed in writing to such retention and the terms of such retention. All Designees shall be deemed to have agreed to submit disputes

concerning their rights, obligations and compensation in their capacity as Designees to this Court.

19. The Receiver, the Deputy Receiver(s) and the Designees (collectively, the "Indemnitees") shall have no personal liability for their acts or omissions in connection with their duties, provided that such acts or omissions are or were undertaken in good faith and without willful misconduct, gross negligence or criminal intent. All expenses, costs and attorneys' fees incurred by the Indemnitees in connection with any lawsuit brought against them in their representative capacities shall be subject to the approval of the Receiver, except that in the event that the Receiver is the Indemnitee this Court's approval shall be required, and such expenses, costs and attorneys' fees shall be exclusively paid out of the funds and Assets of FMC-CAPTIVE and FMC-RRG. The Indemnitees in their capacities as such shall not be deemed to be employees of the State of Delaware.

20. FMC-CAPTIVE and FMC-RRG are each separate Delaware corporations. Therefore, until further order of this Court upon a showing of cause for substantively consolidating the estates of the two insurers, the Receiver shall maintain the assets and liabilities of each such insurer separate and apart from the assets and liabilities

of each other such insurer. However, in order to avoid duplication of expenses, these two cases are administratively consolidated in this proceeding and the Receiver and all other parties may file all pleadings relating to the two insurers in this proceeding as if a single receivership proceeding. All parties shall designate in each pleading whether the relief sought is for or against FMC-CAPTIVE, FMC-RRG, or both of them.

21. The Receiver may file or record this Order in Delaware and other jurisdictions as the Receiver deems appropriate and/or necessary. The filing or recording of this Order or a certified copy hereof with the Register in Chancery and with the recorder of deeds of the jurisdiction in which FMC-CAPTIVE and FMC-RRG's corporate and administrative offices are located or, in the case of real estate or other recorded property interests, with the recorder of deeds of the jurisdictions where the property is located, shall impart the same notice as would be imparted by a deed, bill of sale or other evidence of title duly filed or recorded with that recorder of deeds. Without limiting the foregoing, the filing of this Order with the Register in Chancery also constitutes notice to all sureties and fidelity bondholders of FMC-CAPTIVE and FMC-RRG of all potential claims against FMC-CAPTIVE and/or

FMC-RRG under such policies and shall constitute the perfection of a lien in favor of FMC-CAPTIVE and/or FMC-RRG under the Uniform Commercial Code or any like Federal or state law, regulation or order dealing with the priority of claims.

22. The Receiver is hereby authorized to transfer some or all of FMC-CAPTIVE and FMC-RRG's Assets and liabilities to one or more separate affiliates or subsidiaries for the overall benefit of FMC-CAPTIVE and/or FMC-RRG, their members, policyholders, creditors, and stockholders, subject to prior approval by this Court.

23. Within a reasonable time after receipt of a claim in the liquidation proceedings of FMC-CAPTIVE and FMC-RRG, the Receiver shall give notice by mail to any and all persons interested in such claim of the Receiver's proposed report and recommendation to the Court regarding the allowance or denial (in whole or in part) of such claim.

24. Within sixty (60) days of the mailing of the proposed report and recommendation, the interested person being given notice of such proposed report and recommendation may file a written objection thereto with the Receiver.

25. Within a reasonable time after such sixty (60) days, the Receiver shall file with the Court such report and recommendation.

26. The Court may decline to hear the objections of a claimant to a proposed report and recommendation in the absence of a timely written objection thereto by a person interested therein.

27. Hereafter the caption of this cause and all pleadings in this matter shall read as:

"IN THE MATTER OF THE LIQUIDATION OF
FMC INSURANCE COMPANY, INC. AND FEDERAL
MOTOR CARRIERS RISK RETENTION GROUP,
INC."

28. Within ninety (90) calendar days of receipt of this Order, or as soon as possible after an interested party or potential creditor subsequently becomes known to the Receiver, the Receiver shall serve a copy of this Liquidation and Injunction Order with Bar Date on all interested parties, all known potential creditors, all current and former members and stockholders of FMC-CAPTIVE and FMC-RRG, all Board members of the company, their captive manager, their brokers, their agents, their reinsurer(s), and any reinsurance intermediaries, all other known vendors, all State Insurance Commissioners, and the National Association of Insurance Commissioners by United

States first class mail, postage prepaid, provided that in the Receiver's discretion, such notice may be mailed instead by United States first class certified mail, return receipt requested, or by bulk certified mail with proof of mailing on United States Postal Form 3606, to such interested party or potential creditor's last known address in the company's files.

29. This Order shall be effective until further order of this Court.

30. This Liquidation and Injunction Order shall be deemed a public document and shall be filed on the Court's electronic docket as a public document. The Liquidation Petition and the exhibits thereto shall be unsealed.

31. All rights and obligations of the Commissioner pursuant to this Order shall inure to her successor(s) in office and such successor shall substitute for the Commissioner as Receiver upon his or her taking of the oath as the Insurance Commissioner of the State of Delaware-

32. This Court shall retain jurisdiction in this cause for the purpose of granting such other and further relief as this cause, the interests of the members, policyholders, creditors, and stockholders of FMC-CAPTIVE and FMC-RRG, and the public may require. The Receiver, or any interested party upon notice to the Receiver, may at

any time make application for such other and further relief
as either sees fit.

AGREED TO:

*State of Delaware ex. rel.
The Honorable Karen Weldin Stewart,
CIR-ML, in her capacity as the
Insurance Commissioner of the State
of Delaware*

THE HONORABLE JOSEPH R.
BIDEN III, ATTORNEY GENERAL
OF THE STATE OF DELAWARE

By: /s/ Edward K. Black

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*Attorney for Petitioner:
The State of Delaware ex. rel.
Honorable Karen Weldin
Stewart, CIR-ML, in her
capacity as the Insurance
Commissioner of the State
of Delaware*

- AND -

*FMC Insurance Company, Inc. and
Federal Motor Carriers Risk Retention
Group, Inc.*

By: /s/ Kevin W. Goldstein

Kevin W. Goldstein, Esquire
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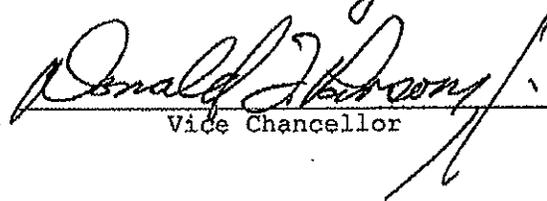
Attorneys for Respondents:
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Federal Motor Carriers Risk Retention
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- AND -

SO ORDERED this 18th day of August, 2011.


Vice Chancellor

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: Donald F Parsons

File & Serve

Transaction ID: 39336746

Current Date: Aug 17, 2011

Case Number: 6712-VCP

Case Name: CONF ORD - State Of Delaware et al vs FMC Insurance Co Inc et al

Court Authorizer: Donald F Parsons

/s/ Judge Donald F Parsons

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

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

CARLOS RUIZ,

Plaintiff,

vs.

DIVANIS CABALLE RODRIGUEZ,

Defendant.

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

Plaintiff, CARLOS RUIZ, by and through the undersigned counsel and pursuant to Rule 7.1 of the Local Rules for the Southern District of Florida, files this Response in Opposition to Defendant's Motion to Stay Proceedings and Incorporated Memorandum of Law, and in support thereof states as follows:

1. Plaintiff, CARLOS RUIZ, has filed this action for damages against Defendant, DIVANIS CABELLE RODRIGUEZ.
2. CARLOS RUIZ and DIVANIS CABELLE RODRIGUEZ are the only parties to this action.
3. Plaintiff, in his Complaint, asserts that he sustained serious bodily injuries in an automobile accident that occurred as a direct result of Defendant's negligent operation of a semi-trailer truck. [Plaintiff's Complaint for Damages and Demand for Jury Trial, ¶ 4-5].
4. Plaintiff originally filed this action in the Eleventh Circuit Court in and for Miami-Dade County, Florida, CASE NO.: 10-17389 CA 06, on March 18, 2010.
5. On February 28, 2011, Defendant filed a Notice of Removal with this Court, on grounds of

diversity of citizenship of the parties pursuant to 28 U.S.C. § 1332. [D.E. 1].

6. On September 15, 2011, Defendant filed a Motion to Stay Proceedings in the present action for a period of 180 days. [D.E. 9].
7. Defendant asserts that the proceedings in this Federal District Court should be stayed pursuant to an order issued by the Court of Chancery of the State of Delaware. [D.E. 9, ¶ 3].
8. Pursuant to the Delaware order, which was entered on August 18, 2011, the risk retention group, FMC-RRG, has been declared financially impaired and has consented to liquidation by the Insurance Commissioner of the State of Delaware. [D.E. 9, Exhibit A, p. 2].
9. A stay of the proceedings, under the facts of this case, would be inappropriate.
10. The Delaware order pertains to FMC-RRG, which is not a party to the current action.
11. The scope of the current action 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. Neither of these issues is addressed in the Delaware state liquidation proceedings.
12. The merits of the current action will not be controlled by the outcome of the Delaware proceeding as it does not involve any of the same parties or subject matter in dispute.
13. Resolution of the current action will, in no way, interfere with the Delaware proceedings.
14. A stay is neither mandated nor justified by equity in this case. Accordingly, Defendant's Motion to Stay Proceedings should be denied.