

**IN THE THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

CASE NO: 3D19
LT CASE NO: 18-CA-023492

Petitioner,

v.

PAUL AND BETHANNE KLUGERMAN,

Respondents.

**INDEX TO APPENDIX TO
RESPONSE TO PETITION FOR WRIT OF PROHIBITION**

| Tab | Document |
|-----|--|
| A | Docket Sheet |
| B | February 5, 2019 Order setting trial |
| C | March 8, 2019 Motion to compel responses to discovery requests |
| D | March 11, 2019 Order on motion to compel |
| E | April 4, 2019 Motion for order to show cause and for sanctions |
| F | April 26, 2019 Notice of compliance with February 5, 2019 |
| G | May 10, 2019 Third Request for Production |
| H | May 29, 2019 Motion for Relief from Admissions |
| I | May 29, 2019 Motion to Continue Trial |
| J | May 31, 2019 Notice of Hearing |
| K | Judge Miller's instructions on scheduling |
| L | May 31, 2019 Objection to Untimely Discovery |
| M | June 3, 2019 Response in Opposition to Motion for Relief from Admissions |
| N | June 4, 2019 Order Denying Motion for Relief from Admissions |
| O | June 6, 2019 Motion for Reconsideration |
| P | June 6, 2019 Motion for Disqualification |
| Q | April 23, 2018 Daily Business Review article: Lawyers Debate Cole Scott's Move to Throw Judge David Miller Off Cases |
| R | October 8, 2018 Motion for Protective Order in <i>Praca v. Safepoint</i> |
| S | October 22, 2018 Motion for Disqualification in <i>Praca v. Safepoint</i> |
| T | June 4, 2019 Notice of Hearing |

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished, via email through the efilng portal, this 17th day of June, 2019 to Curt Allen and Brian Hohman, of Butler Weihmuller Katz Craig LLP, 400 North Ashley Drive, Suite 2300, Tampa, FL 33602, at:

callen@butler.legal
bhohman@butler.legal
kwhite@butler.legal

and to

The Honorable David C. Miller, Dade County Courthouse, 73 West Flagler Street, Room 525, at Miami, Florida 33130-1731

/s/Gray R. Proctor
Attorney

lerk's Home (<http://www.miami-dadeclerk.com/home.asp>)
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y Account (<https://www2.miami-dadeclerk.com/PremierServices/login.aspx>)

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CLERK *of the* COURTS
MIAMI-DADE COUNTY, FLORIDA



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PAUL KLUGERMAN ET AL VS AVATAR PROPERTY & CASUALTY INSURANCE COMPANY

Local Case Number: 2018-023492-CA-01

Filing Date: 07/11/2018

State Case Number: 132018CA023492000001

Case Type: Contract & Indebtedness

Consolidated Case No.: N/A

Judicial Section: CA21

Case Status: OPEN












 Parties


















Number of Parties: 3 
















 Dockets













Dockets Retrieved: 68 



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| | Number | Date | Book/Page | Docket Entry | Event Type | Comments |
|---|--------|------------|-----------|---|------------|---|
|  | 64 | 06/07/2019 | | Order Denying Judicial Disqualification | Event | DENIED |
|  | 63 | 06/04/2019 | | Order: | Event | DENYING DEFENDANT MOTION RELIEF FORM ADMISSIONS |
|  | 62 | 06/04/2019 | | Notice of Cancellation of Hearing | Event | |
|  | 61 | 06/04/2019 | | Notice of Answer to Interrogatories | Event | |
|  | 60 | 06/04/2019 | | Notice of Hearing- | Event | JUNE 11, 2019 |
|  | 59 | 06/03/2019 | | Response to Motion | Event | IN OPPOSITION TO MOTION FOR RELIEF FROM ADMISSIONS. |
|  | 58 | 05/31/2019 | | Notice of Hearing- | Event | |
|  | 57 | 05/31/2019 | | Motion in Limine | Event | |
|  | 56 | 05/31/2019 | | Objection: | Event | TO DEFENDANT'S UNTIMELY DISCOVERY REQUESTS |
|  | 55 | 05/29/2019 | | Notice of Filing: | Event | VERIFICATION OF AVATAR PROPERTY AND CASUALTY INSURANCE COMPANY |
|  | 54 | 05/29/2019 | | Motion: | Event | TO CONTINUE TRIAL |

| | Number | Date | Book/Page | Docket Entry | Event Type | Comments |
|---|--------|------------|-----------|--|------------|--------------------|
|  | 53 | 05/29/2019 | | Motion to Compel | Event | |
|  | 52 | 05/29/2019 | | Notice of Compliance | Event | |
|  | 51 | 05/29/2019 | | Motion for Relief from Judgment | Event | |
|  | 50 | 05/28/2019 | | Notice of Answer to Interrogatories | Event | |
|  | 49 | 05/28/2019 | | Response to Request for Admissions | Event | |
|  | 48 | 05/28/2019 | | Response to Request for Production | Event | |
|  | 47 | 05/28/2019 | | Notice of Production | Event | |
|  | 46 | 05/28/2019 | | Request for Admissions | Event | |
|  | 45 | 05/28/2019 | | Request for Production | Event | |
|  | 44 | 05/28/2019 | | Request for Production | Event | |
|  | 43 | 05/28/2019 | | Notice of Interrogatory | Event | |
|  | 42 | 05/28/2019 | | Notice of Interrogatory | Event | |
|  | 41 | 05/28/2019 | | Mediators Report | Event | |
| | | 05/28/2019 | | Calendar Call | Hearing | JURY 3 DAYS |
|  | 40 | 05/22/2019 | | Defendants Certificate of Settlement Authority | Event | |
|  | 39 | 05/10/2019 | | Request for Production | Event | |
|  | 38 | 05/03/2019 | | Motion to Compel | Event | |
|  | 37 | 05/03/2019 | | Exhibit List | Event | |

| | Number | Date | Book/Page | Docket Entry | Event Type | Comments |
|---|--------|------------|-----------|-------------------------------------|------------|---|
|  | 36 | 04/26/2019 | | Notice of Compliance | Event | WITH FEB. 5, 2019 COURT ORDER |
|  | 35 | 04/05/2019 | | Notice of Appt of Medtr&cnfrnce | Event | |
|  | 34 | 04/05/2019 | | Witness List | Event | |
|  | 33 | 04/04/2019 | | Motion to Show Cause | Event | AND FOR SANCTIONS |
|  | 31 | 03/11/2019 | | Order on Motion to Compel | Event | ON PLAINTIFF'S EX-PARTE MOTION TO COMPEL DEFENDANT'S RESPONSES TO DISCOVERY REQUESTS |
|  | 32 | 03/08/2019 | | Motion to Compel | Event | |
|  | 30 | 03/05/2019 | | Witness List | Event | |
|  | 29 | 03/05/2019 | | Witness List | Event | |
|  | 28 | 02/07/2019 | | Reply to Affirmative Defenses | Event | |
|  | 27 | 02/07/2019 | | Email Notice: | Event | EMAIL ADDRESS: |
|  | 26 | 02/05/2019 | | Notice of Jury Trial | Event | |
|  | 25 | 02/05/2019 | | Order of Referral to Mediation Unit | Event | |
|  | 24 | 02/05/2019 | | Order Setting Jury Trial | Event | |
|  | 23 | 01/28/2019 | | Answer and Affirmative Defense | Event | |
|  | 22 | 01/21/2019 | | Motion to Compel | Event | |

| | Number | Date | Book/Page | Docket Entry | Event Type | Comments |
|---|--------|------------|-----------|----------------------------------|------------|---|
|  | 21 | 01/17/2019 | | Order: | Event | DENYING PLAINTIFF'S MOTION FOR DEFAULT AND SANCTIONS |
| | | 01/17/2019 | | 5 Minute Motion Calendar | Hearing | |
|  | 20 | 01/15/2019 | | Motion for Extension of Time | Event | |
|  | 19 | 12/27/2018 | | Notice of Hearing- | Event | |
|  | 18 | 12/13/2018 | | Motion for Extension of Time | Event | |
| | | 12/13/2018 | | 5 Minute Motion Calendar | Hearing | |
|  | 17 | 12/12/2018 | | Notice of Hearing- | Event | DECEMBER 13, 2018 AT 8:00 AM |
|  | 16 | 12/06/2018 | | Notice of Hearing- | Event | 12/13/2018 |
|  | 15 | 11/30/2018 | | Motion for Sanctions | Event | |
|  | 14 | 11/19/2018 | | Motion for Summary Judgment | Event | |
|  | 13 | 11/12/2018 | | Motion for Extension of Time | Event | |
|  | 12 | 10/17/2018 | | Motion for Extension of Time | Event | |
|  | 11 | 10/01/2018 | | Notice of Unavailability/absence | Event | |
|  | 10 | 09/28/2018 | | Motion to Dismiss | Event | |
| | | 08/06/2018 | | 20 Day Summons Issued | Service | |

| Number | Date | Book/Page | Docket Entry | Event Type | Comments |
|---|------------|-----------|---------------------------------------|------------|---|
| 9 | 08/04/2018 | | Receipt: | Event | RECEIPT#:3420257 AMT PAID:\$10.00 NAME:THOMAS J MORGAN 55 MERRICK WAY STE 404 CORAL GABLES FL 33134-5126 COMMENT: ALLOCATION CODE QUANTITY UNIT AMOUNT 3139- SUMMONS ISSUE FEE 1 \$10.00 \$10.00 TENDER TYPE:E- FILING ACH TENDER AMT:\$10.0 |
|  8 | 08/03/2018 | | ESummons 20 Day Issued | Event | <i>Parties: AVATAR</i> <i>PROPERTY &</i> <i>CASUALTY</i> <i>INSURANCE</i> <i>COMPANY</i> |
|  7 | 08/02/2018 | | (A) 20 Day (C) Summons (Sub) Received | Event | |
| 6 | 07/20/2018 | | Receipt: | Event | RECEIPT#:3410136 AMT PAID:\$401.00 NAME:THOMAS J MORGAN 55 MERRICK WAY STE 404 CORAL GABLES FL 33134-5126 COMMENT: ALLOCATION CODE QUANTITY UNIT AMOUNT 3100- CIRCUIT FILING FEE 1 \$401.00 \$401.00 TENDER TYPE:E- FILING ACH TENDER AMT:\$40 |

| | Number | Date | Book/Page | Docket Entry | Event Type | Comments |
|---|--------|------------|-----------|-------------------------|------------|----------|
|  | 5 | 07/11/2018 | | Request for Admissions | Event | |
|  | 4 | 07/11/2018 | | Request for Production | Event | |
|  | 3 | 07/11/2018 | | Notice of Interrogatory | Event | |
|  | 2 | 07/11/2018 | | Complaint | Event | |
|  | 1 | 07/11/2018 | | Civil Cover | Event | |

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

Paul Klugerman
Plaintiff,

CIRCUIT CIVIL DIVISION

vs.

CASE NO.: 2018-023492-CA-01

**AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY**
Defendant,

Section: CA 21

**UNIFORM ORDER SETTING CAUSE FOR
JURY TRIAL, PRE-TRIAL CONFERENCE,
AND PRE-TRIAL INSTRUCTIONS**

THIS CAUSE is hereby set for jury trial before the undersigned Judge at the Dade County Courthouse, 73 West Flagler Street, Miami, FL 33130, Courtroom 5-3, for the 3 week period commencing:

06/03/2019, or as soon thereafter as the same may be heard.

ALL ATTORNEYS, pursuant to Fla. R. Civ. P. 1.200., are directed to appear before the undersigned Judge at the Miami-Dade County Courthouse for:

Calendar Call at 9:00 am on 05/28/2019.

All attorneys appearing at the Calendar Call shall be **thoroughly familiar** with the cause and be prepared to consider and determine such matters as are set forth in Fla. R. Civ. P. 1.200(b). Failure to appear as directed or to otherwise strictly comply with the terms of this Order may result in sanctions, including, but not limited to, the dismissal of the action, striking of pleadings, limiting of proof, striking a witness or such other actions as the Court may deem proper.

It is further Ordered and Adjudged as follows:

1. The parties shall do all things necessary to **assure availability of their witnesses** for the **entire trial period** or to otherwise **preserve their testimony** for trial as

provided by Florida Rules of Civil Procedure. See Fla. R. Civ. P. 1.300 and 1.460. See Fla. R. Jud. Adm. 2.085.

2. At least **ninety (90) days** prior to the first day of the trial period set forth herein, counsel for each party shall file a **list of the proper names and addresses of all witnesses** who are expected to testify in this cause, including all “hybrid” witnesses who may be considered a fact witness and also give expert testimony.

3. At least **sixty (60) days** prior to the first day of the trial period set forth herein, counsel for each party shall file a **list of the proper names and addresses of all expert witnesses** retained by the parties **who are expected to testify at the trial of this cause**. The parties shall also list the **specialty** of each expert, what **element of the case** the expert will express opinions on (standard of care, causation, damages, etc.), and provide all parties a copy of the **experts’ report(s)**, if applicable, and/or provide a short summary of the testimony expected from each expert pursuant to Fla. R. Civ. P.1.280(b)(5). Each party is limited to **one expert per specialty**.

4. **Upon receipt of opposing counsel’s expert witness disclosure**, each party shall have **fifteen (15) days** to list the **proper names of additional rebuttal experts or impeachment witnesses**. The parties shall follow the instructions in paragraph 3 with regards to the information accompanying the listing of additional experts retained by the parties.

5. At the time of the Calendar Call, if necessary, counsel for each party will file any objections to the **authenticity** of any records or evidence produced during discovery that are expected to be introduced into evidence so as to put all parties on notice of the need for a records custodian witness. Failure to timely file such objection will be deemed as a waiver of any objection to authenticity. All other substantive objections are preserved.

6. All **compulsory medical evaluations** pursuant to Fla. R. Civ. P. 1.360 shall be completed at least **forty-five (45) days** prior to the first day of the trial period set forth herein.

7. At least **thirty (30) days** prior to the first day of the trial period set forth herein, counsel for each party shall file a **list of all exhibits** intended to be introduced as evidence at trial and make these exhibits available to opposing counsel for examination and inspection, including the **initialing** of the exhibits **no later than five (5) days** prior to the first day of the trial period.

8. ***Daubert* motions shall be filed thirty (30) days prior to the first day of the trial period. Hearing on these motions shall be set NOT LATER THAN fifteen (15) days prior to the first day of the trial period. At the time of the Calendar Call, each party shall make known to opposing counsel and the court all substantive motions, including all motions in limine, that still need to be ruled upon prior to trial. Failure to do so may be deemed an abandonment of any pending motion(s). If any *Daubert* motion has been timely filed and not heard, it shall be drawn to the attention of the court at Calendar Call.**

9. **Discovery shall be concluded at least fifteen (15) days prior to the first day of the trial period set forth herein. Any further discovery must be conducted by the written stipulation of all parties or leave of the Court.**

10. **Ten (10) days prior to the first day of the trial period, the parties shall file their page-line designation for depositions that they intend to read or play at trial; the opposing party shall have five (5) days thereafter to file objections and/or counter-designations.**

11. **Mediation shall have been completed *prior to the Calendar Call* to either resolve the case or narrow the issues. The parties shall immediately notify the Court in the event of settlement and submit a Stipulation and Order of Dismissal. As well, the parties shall advise the Court of the cancellation of any pending hearings.**

12. **The parties are directed to exchange proposed jury instructions and verdict forms at the time of the Calendar Call. At least three (3) days before commencement of the trial period the parties shall agree on as many jury instructions as possible and be prepared to submit the agreed instructions to the court as well as designate to the court the proposed instructions in dispute.**

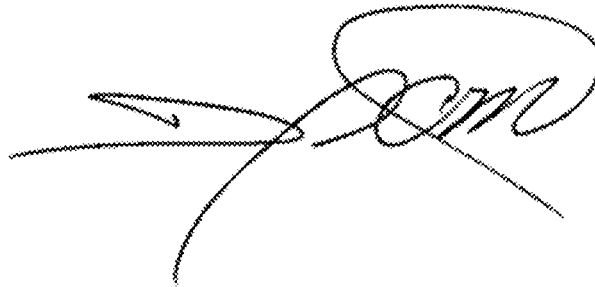
13. **Should the parties believe that a different schedule is required for the efficient administration of this matter, they are encouraged to meet and develop a joint stipulated order and/or set a case management conference pursuant to Fla. R. Civ. P. 1.200. If parties expect that the case will require a pretrial conference, they should request and schedule same sufficiently in advance of trial to permit same to be scheduled.**

14. Failure to list a witness or exhibit pursuant to this order may result in the exclusion of that witness or exhibit from trial.

15. Should this matter be continued or not reached during the trial docket set forth herein, each time limitation and provision contained herein shall apply to the **new trial** date.

16. All time periods herein refer to calendar days.

DONE AND ORDERED at Miami, Miami-Dade County, Florida, 5th day of February, 2019.



23492-CA-01

David C. Miller
CIRCUIT COURT JUDGE

No Further Judicial Action Required on THIS MOTION.
CLERK TO RECLOSE CASE IF POST JUDGMENT.

Electronic Service List:

Curt Allen <callen@butler.legal>, <kwhite@butler.legal>

Thomas J. Morgan, Jr. <mlg.eservice@yahoo.com>

Robin T Pero <rpero@butler.legal>, <epadilla@butler.legal>

Thomas J Morgan Jr <mlg.eservice@morganlawgroup.net>, <gmailbox@morganlawgroup.net>

Edgar A. Kelly <ekelly@morganlawgroup.net>

Mailing Service List:

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Eleventh Judicial Circuit

Court's ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 NW 1st Ave., Suite 2702, Miami, FL 33128, Telephone (305) 349-7175; TDD (305) 349-7174, Fax (305) 349-7355 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

Ordered Date:

Signature:

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

CASE NO. 2018-023492-CA-01

PAUL KLUGERMAN and
BETHANE KLUGERMAN,

Plaintiffs,

v.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

Defendant.

_____ /

**PLAINTIFFS' EX-PARTE MOTION TO COMPEL DEFENDANT'S
RESPONSES TO DISCOVERY REQUESTS**

COME NOW, Plaintiffs, **PAUL KLUGERMAN and BETHANE KLUGERMAN**, by and through her undersigned counsel and pursuant to F.R.C.P. 1.380, and hereby file this Ex-Parte Motion to Compel Defendant's Responses to Discovery Requests, and in support thereof states as follows:

1. Along with the Summons and Complaint herein, Plaintiff served upon Defendant First Request to Produce, First Request for Admissions, and First Interrogatories on September 10, 2018 (*See Exhibit A*).
2. Defendant's responses to the aforementioned discovery requests were due October 25, 2018.
3. On October 17, 2018, Defendant filed a 1st Motion for Extension of Time to respond to Plaintiff's discovery requests, requesting until November 12, 2018 to respond (*See Exhibit B*).

4. On November 12, 2018, Defendant filed a 2nd Motion for Extension of Time to respond to Plaintiff's discovery requests, requesting until December 13, 2018 to respond (*See Exhibit C*).

5. On December 13, 2018, Defendant filed a 3rd Motion for Extension of Time to respond to Plaintiff's discovery requests, requesting until January 15, 2019 to respond (*See Exhibit D*).

6. On January 15, 2019, Defendant filed a 4th Motion for Extension of Time to respond to Plaintiff's discovery requests, requesting until January 17, 2019 to respond (*See Exhibit E*).

7. Defendant has failed to respond to Plaintiff's First Interrogatories, First Request for Admissions, and First Request to Produce in a timely manner.

8. More than one hundred and seventy nine (179) days have elapsed since the service of Plaintiff's discovery requests.

9. On February 27, 2019, Plaintiff notified Defendant if responses were not received in seven (7) days Plaintiff would file this Motion.

10. Defendant has failed to object to the aforementioned discovery requests.

11. Defendant should be precluded from posing any objections, other than those based on a valid claim of privilege.

12. Plaintiff is being greatly prejudiced and unjustly prevented from properly litigating this case due to Defendant's failure to comply with the rules governing discovery.

13. Defendant's failures have forced Plaintiff to incur unnecessary expenses in preparing for this Motion.

14. Defendant should pay Plaintiff reasonable attorneys' fees and costs incurred for having to bring this Motion.

15. Plaintiff's counsel hereby certifies that a good faith effort has been made to resolve this discovery dispute without court intervention (*See Exhibit F*).

WHEREFORE, Plaintiff, **PAUL KLUGERMAN and BETHANE KLUGERMAN**, respectfully requests that this Honorable Court enter its order compelling Defendant, **AVATAR PROPERTY & CASUALTY INSURANCE COMPANY**, to file complete, verified answers to Plaintiff's First Interrogatories, responses to Plaintiff's First Request for Admissions, and produce documents responsive to Plaintiff's First Request to Produce, both without any objections excepting those based on a valid claimed privilege, within ten (10) days of the entry of the Court's order, and for any other relief as is deemed just and proper.

CERTIFICATE OF SERVICE

We hereby certify that a copy of the foregoing was served via the Florida Courts E-Filing Portal this 8th day of March, 2019, on Curt Allen, Esq., Butler Weihmuller Katz Craig LLP, 400 N Ashley Dr, Suite 2300, Tampa, FL 33602, callen@butler.legal, kwhite@butler.legal.

THE MORGAN LAW GROUP, P.A.

Attorneys for the Plaintiff
55 Merrick Way, Suite 404
Coral Gables, FL 33134
(305) 569-9900
For Service of Court Documents:
mlg_eservice@morganlawgroup.net

By: /s/ Joseph S. Lopez
Thomas J. Morgan, Jr., Esq.
Florida Bar No. 127612
Joseph S. Lopez, Esq.
Florida Bar No. 116200
jslopez@morganlawgroup.net

/hm

Exhibit A



CHIEF FINANCIAL OFFICER
JIMMY PATRONIS
STATE OF FLORIDA



18-000207739

PAUL KLUGERMAN AND BETHANNE
KLUGERMAN

PLAINTIFF(S)

VS.

AVATAR PROPERTY & CASUALTY INSURANCE
COMPANY

DEFENDANT(S)

SUMMONS, COMPLAINT, DISCOVERY

CASE #: 2018-023492-CA-01
COURT: CIRCUIT COURT
COUNTY: MIAMI-DADE
DFS-SOP #: 18-000207739

NOTICE OF SERVICE OF PROCESS

NOTICE IS HEREBY GIVEN of acceptance of Service of Process by the Chief Financial Officer of the State of Florida. Said process was received in my office by ELECTRONIC DELIVERY on Wednesday, September 5, 2018 and a copy was forwarded by ELECTRONIC DELIVERY on Monday, September 10, 2018 to the designated agent for the named entity as shown below.

AVATAR PROPERTY & CASUALTY INSURANCE COMPANY
KENDRA F SHAW
1101 E CUMBERLAND AVE
TAMPA, FL 33602

***Our office will only serve the initial process(Summons and Complaint) or Subpoena and is not responsible for transmittal of any subsequent filings, pleadings, or documents unless otherwise ordered by the Court pursuant to Florida Rules of Civil Procedure, Rule #1.080**

Jimmy Patronis
Chief Financial Officer

THOMAS J MORGAN
MORGAN LAW GROUP
55 MERRICK WAY, SUITE 404
CORAL GABLES, FL 33134

JJ1

Exhibit B

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

CIRCUIT CIVIL DIVISION

PAUL KLUGERMAN and
BETHANNE KLUGERMAN,

Plaintiffs,

vs.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

CASE NO: 2018-023492-CA-01

Defendant.

_____ /

MOTION FOR EXTENSION OF TIME

Defendant, Avatar Property and Casualty Insurance Company (“Avatar”), moves for an extension of time to respond to Plaintiffs’ discovery requests.

1. On September 10, 2018, Plaintiffs served eleven interrogatories, six requests for admissions, and, sixteen requests for production of documents.

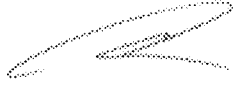
2. Avatar moves for an extension¹ of time to respond to Plaintiffs’ discovery requests, up until November 12, 2018.

3. Plaintiffs will not be prejudiced by this request.

WHEREFORE, Avatar respectfully requests the above relief, and, all such other relief deemed appropriate.

¹ On October 1, 2018, Avatar served a “Notice of Unavailability.” This notice advises that Avatar’s counsel is unavailable from October 17, 2018, through October 31, 2018. However, the deadline to respond to Plaintiffs’ discovery falls within the period of the “Notice of Unavailability.” Thus, Avatar is filing this motion for extension of time during the period. In no way should this be taken as a waiver of the “Notice of Unavailability.”

BUTLER WEIHMULLER KATZ CRAIG, LLP



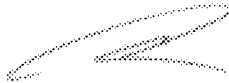
CURT ALLEN, ESQUIRE
Florida Bar No.: 0008028
callen@butler.legal
BRIAN HOHMAN, ESQUIRE
Florida Bar No.: 0764671
bhohman@butler.legal
Secondary: kwhite@butler.legal
400 North Ashley Drive, Suite 2300
Tampa, Florida 33602
Telephone: (813) 281-1900
Facsimile: (813) 281-0900
Counsel for Respondent

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to:

Thomas J. Morgan, Junior, Esquire
Morgan Law Group, P.A.
55 Merrick Way, Suite 404
Coral Gables, Florida 33134
mlg.eservice@yahoo.com

by E-Portal and E-Mail on October 17, 2018.



CURT ALLEN, ESQUIRE

Exhibit C

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

CIRCUIT CIVIL DIVISION

PAUL KLUGERMAN and
BETHANNE KLUGERMAN,

Plaintiffs,

vs.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

CASE NO: 2018-023492-CA-01

Defendant.

_____ /

MOTION FOR EXTENSION OF TIME

Defendant, Avatar Property and Casualty Insurance Company ("Avatar"), moves for an extension of time to respond to Plaintiffs' discovery requests.

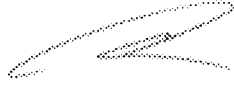
1. On September 10, 2018, Plaintiffs served eleven interrogatories, six requests for admissions, and, sixteen requests for production of documents.

2. Avatar moves for an extension of time to respond to Plaintiffs' discovery requests, up until December 13, 2018.

3. Plaintiffs will not be prejudiced by this request.

WHEREFORE, Avatar respectfully requests the above relief, and, all such other relief deemed appropriate.

BUTLER WEIHMULLER KATZ CRAIG, LLP



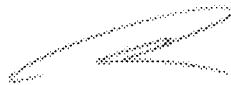
CURT ALLEN, ESQUIRE
Florida Bar No.: 0008028
callen@butler.legal
BRIAN HOHMAN, ESQUIRE
Florida Bar No.: 0764671
bhohman@butler.legal
Secondary: kwhite@butler.legal
400 North Ashley Drive, Suite 2300
Tampa, Florida 33602
Telephone: (813) 281-1900
Facsimile: (813) 281-0900
Counsel for Respondent

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to:

Thomas J. Morgan, Junior, Esquire
Morgan Law Group, P.A.
55 Merrick Way, Suite 404
Coral Gables, Florida 33134
mlg.eservice@yahoo.com

by E-Portal and E-Mail on November 12, 2018.



CURT ALLEN, ESQUIRE

Exhibit D

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

CIRCUIT CIVIL DIVISION

PAUL KLUGERMAN and
BETHANNE KLUGERMAN,

Plaintiffs,

vs.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

CASE NO: 2018-023492-CA-01

Defendant.

_____ /

MOTION FOR EXTENSION OF TIME

Defendant, Avatar Property and Casualty Insurance Company ("Avatar"), moves for an extension of time to respond to Plaintiffs' discovery requests.

1. On September 10, 2018, Plaintiffs served eleven interrogatories, six requests for admissions, and, sixteen requests for production of documents.

2. Avatar moves for an extension of time to respond to Plaintiffs' discovery requests, up until January 15, 2019.

3. Plaintiffs will not be prejudiced by this request.

WHEREFORE, Avatar respectfully requests the above relief, and, all such other relief deemed appropriate.

BUTLER WEIHMULLER KATZ CRAIG, LLP



CURT ALLEN, ESQUIRE
Florida Bar No.: 0008028
callen@butler.legal
BRIAN HOHMAN, ESQUIRE
Florida Bar No.: 0764671
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400 North Ashley Drive, Suite 2300
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Telephone: (813) 281-1900
Facsimile: (813) 281-0900
Counsel for Respondent

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to:

Thomas J. Morgan, Junior, Esquire
Morgan Law Group, P.A.
55 Merrick Way, Suite 404
Coral Gables, Florida 33134
mlg.eservice@yahoo.com

by E-Portal and E-Mail on December 13, 2018.



CURT ALLEN, ESQUIRE

Exhibit E

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

CIRCUIT CIVIL DIVISION

PAUL KLUGERMAN and
BETHANNE KLUGERMAN,

Plaintiffs,

vs.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

CASE NO: 2018-023492-CA-01

Defendant.

_____ /

MOTION FOR EXTENSION OF TIME

Defendant, Avatar Property and Casualty Insurance Company ("Avatar"), moves for an extension of time to respond to Plaintiffs' discovery requests.

1. On September 10, 2018, Plaintiffs served eleven interrogatories, six requests for admissions, and, sixteen requests for production of documents.

2. Avatar moves for an extension of time to respond to Plaintiffs' discovery requests, up until January 17, 2019.

3. Plaintiffs will not be prejudiced by this request.

WHEREFORE, Avatar respectfully requests the above relief, and, all such other relief deemed appropriate.

BUTLER WEIHMULLER KATZ CRAIG, LLP



CURT ALLEN, ESQUIRE
Florida Bar No.: 0008028
callen@butler.legal
BRIAN HOHMAN, ESQUIRE
Florida Bar No.: 0764671
bhohman@butler.legal
Secondary: kwhite@butler.legal
400 North Ashley Drive, Suite 2300
Tampa, Florida 33602
Telephone: (813) 281-1900
Facsimile: (813) 281-0900
Counsel for Respondent

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to:

Thomas J. Morgan, Junior, Esquire
Morgan Law Group, P.A.
55 Merrick Way, Suite 404
Coral Gables, Florida 33134
mlg.eservice@yahoo.com

by E-Portal and E-Mail on January 15, 2019.



CURT ALLEN, ESQUIRE

Exhibit F



THE MORGAN LAW GROUP
A Professional Association

Thomas J. Morgan, Jr.
Daniel Frank Lopez
Jonathan D. Lawrence
John D. Lanpher, III
Alejandro Sasieta
Edgar A. Kelly
Joseph S. Lopez

Coral Gables - Orlando - Naples
Main Office:
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CORAL GABLES, FLORIDA 33134
TELEPHONE (305) 569-9900 FAX (305) 443-6828
EMAIL: info@morganlawgroup.net
www.PolicyAdvocate.com

Thomas J. Morgan, Sr.
Christopher A. Aguirre
Of Counsel:
Robin D. Benjamin
Erick Trivedi
Ozzie G. Calviac

February 27, 2019

VIA EMAIL ONLY

Curt Allen, Esq.
Butler Weihmuller Katz Craig LLP
400 N Ashley Dr, Suite 2300
Tampa, FL 33602
callen@butler.legal
kwhite@butler.legal

RE: **Klugerman v. Avatar Property & Casualty**
Case No. 2018-023492-CA-01

Dear Mr. Allen:

A review of the file indicates that Defendant's responses to Plaintiff's discovery responses are overdue. Accordingly, please respond to the outstanding discovery requests within seven (7) days from the date of this letter to avoid the necessity of filing the attached Ex-Parte Motion to Compel Responses to Discovery. If you would like to discuss this further, please do not hesitate to contact our office.

Very truly yours,

/s/ Joseph S. Lopez

JOSEPH S. LOPEZ, ESQUIRE

enc: as stated

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

CASE NO. 2018-023492-CA-01

PAUL KLUGERMAN and
BETHANE KLUGERMAN,

Plaintiffs,

v.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

Defendant.

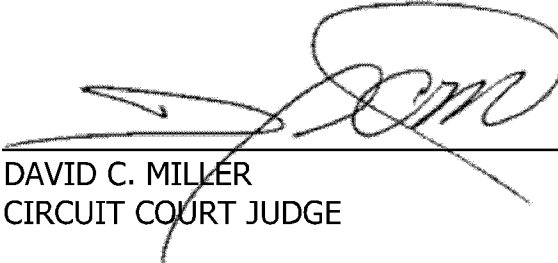
**ORDER ON PLAINTIFF'S EX-PARTE MOTION TO COMPEL
DEFENDANT'S RESPONSES TO DISCOVERY REQUESTS**

The Court having reviewed Plaintiff's Ex-Parte Motion to Compel Defendant's Responses to Discovery Requests, and after reviewing the Court file, it is hereby:

ORDERED and ADJUDGED as follows:

- (1) Plaintiff's Ex-Parte Motion to Compel Defendant's Responses to Discovery Requests is **GRANTED**.
- (2) Defendant shall have ten (10) days from the date of this Order to provide complete responses, including verified answers to interrogatories, to Plaintiff.
- (3) All objections except those based upon privilege are waived.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 03/11/19.



DAVID C. MILLER
CIRCUIT COURT JUDGE

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall

IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed and stamped original Order sent to court file by Judge Bailey's staff.

cc: Curt Allen, Esq., callen@butler.legal, kwhite@butler.legal
Joseph S. Lopez, Esq., mlg.eservice@morganlawgroup.net, jslopez@morganlawgroup.net,
hmontero@morganlawgroup.net

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

CIRCUIT CIVIL DIVISION

PAUL KLUGERMAN and
BETHANE KLUGERMAN,

Plaintiffs,

CASE NO. 2018-023492-CA-01

v.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

Defendant.

PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE AND FOR SANCTIONS

COME NOW, Plaintiffs, **PAUL KLUGERMAN and BETHANE KLUGERMAN**, by and through its undersigned counsel and pursuant to the Florida Rules of Civil Procedure, and hereby file this Motion for Order to Show Cause and for Sanctions and in support thereof would state as follows:

1. On September 10, 2018, Plaintiffs served upon Defendant their First Request for Admissions, First Set of Interrogatories, and First Request for Production (*See Exhibit A*).
2. Defendant's responses to Plaintiffs' Admission, Defendant's Interrogatories and Request for Production were due on or before October 25, 2018.
3. Plaintiffs sent Defendant correspondence on February 27, 2019 in an attempt to resolve this outstanding discovery issue without court intervention (*See Exhibit B*).
4. Plaintiffs filed an Ex-Parte Motion to Compel, which was granted by this Court on March 11, 2019. Pursuant to the terms of the order, Defendant was required to answer Plaintiffs' discovery requests, without objection, within ten (10) days of the order (*See Exhibit C*).

5. Notwithstanding this Court's order, Defendant has still not responded to any of the outstanding discovery nor has Defendant requested any additional time to comply with the court order.

6. More than seven months have now passed since the service of discovery and Defendant has refused and failed wholly to respond. By this time, after the numerous attempts to obtain responses, after the filing of the motion to compel, and after the entry of the order, it is now apparent that Defendant is intentionally resorting to dilatory tactics, delaying Plaintiffs' preparation for upcoming trial in this matter scheduled for the trial period commencing June 3, 2019.

7. As such, an order to contempt inappropriate sanctions is warranted.

8. Counsel for Plaintiffs certifies it has made a good faith attempt to try to resolve this issue without Court intervention.

WHEREFORE, Plaintiffs, **PAUL KLUGERMAN and BETHANE KLUGERMAN**, respectfully move this Honorable Court for entry of an order to show cause and for granting sanctions against Defendant for failure to comply with the Court's order, and any other such relief this Court deems proper.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a copy of the foregoing was served via the Florida Courts E-Filing Portal this 4th day of April, 2019 on Curt Allen, Esq., Butler Weihmuller Katz Craig LLP, 400 North Ashley Dr, Suite 2300, Tampa, FL 33602, callen@butler.legal, bhohman@butler.legal, kwhite@butler.legal.

By: /s/ Joseph S. Lopez
Thomas J. Morgan Jr, Esq.
Florida Bar No. 127612
Joseph S. Lopez, Esq.
Florida Bar No. 127579
THE MORGAN LAW GROUP, P.A.
Attorneys for Plaintiff
55 Merrick Way, Suite 404
Coral Gables, Florida 33134
Phone : 305.569.9900
Fax : 305.443.6828
For service of court documents only:
mlg.eservice@morganlawgroup.net

/hm

Exhibit A



CHIEF FINANCIAL OFFICER
JIMMY PATRONIS
STATE OF FLORIDA



18-000207739

PAUL KLUGERMAN AND BETHANNE
KLUGERMAN

PLAINTIFF(S)

VS.

AVATAR PROPERTY & CASUALTY INSURANCE
COMPANY

DEFENDANT(S)

_____/

SUMMONS, COMPLAINT, DISCOVERY

CASE #: 2018-023492-CA-01
COURT: CIRCUIT COURT
COUNTY: MIAMI-DADE
DFS-SOP #: 18-000207739

NOTICE OF SERVICE OF PROCESS

NOTICE IS HEREBY GIVEN of acceptance of Service of Process by the Chief Financial Officer of the State of Florida. Said process was received in my office by ELECTRONIC DELIVERY on Wednesday, September 5, 2018 and a copy was forwarded by ELECTRONIC DELIVERY on Monday, September 10, 2018 to the designated agent for the named entity as shown below.

AVATAR PROPERTY & CASUALTY INSURANCE COMPANY
KENDRA F SHAW
1101 E CUMBERLAND AVE
TAMPA, FL 33602

***Our office will only serve the initial process(Summons and Complaint) or Subpoena and is not responsible for transmittal of any subsequent filings, pleadings, or documents unless otherwise ordered by the Court pursuant to Florida Rules of Civil Procedure, Rule #1.080**

Jimmy Patronis
Chief Financial Officer

THOMAS J MORGAN
MORGAN LAW GROUP
55 MERRICK WAY, SUITE 404
CORAL GABLES, FL 33134

JJ1

Exhibit B



THE MORGAN LAW GROUP
A Professional Association

Thomas J. Morgan, Jr.
Daniel Frank Lopez
Jonathan D. Lawrence
John D. Lanpher, III
Alejandro Sasieta
Edgar A. Kelly
Joseph S. Lopez

Coral Gables - Orlando - Naples
Main Office:
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www.PolicyAdvocate.com

Thomas J. Morgan, Sr.
Christopher A. Aguirre
Of Counsel:
Robin D. Benjamin
Erick Trivedi
Ozzie G. Calviac

February 27, 2019

VIA EMAIL ONLY

Curt Allen, Esq.
Butler Weihmuller Katz Craig LLP
400 N Ashley Dr, Suite 2300
Tampa, FL 33602
callen@butler.legal
kwhite@butler.legal

RE: **Klugerman v. Avatar Property & Casualty**
Case No. 2018-023492-CA-01

Dear Mr. Allen:

A review of the file indicates that Defendant's responses to Plaintiff's discovery responses are overdue. Accordingly, please respond to the outstanding discovery requests within seven (7) days from the date of this letter to avoid the necessity of filing the attached Ex-Parte Motion to Compel Responses to Discovery. If you would like to discuss this further, please do not hesitate to contact our office.

Very truly yours,

/s/ Joseph S. Lopez

JOSEPH S. LOPEZ, ESQUIRE

enc: as stated

Exhibit C

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

CASE NO. 2018-023492-CA-01

PAUL KLUGERMAN and
BETHANE KLUGERMAN,

Plaintiffs,

v.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

Defendant.

_____ /

**PLAINTIFFS' EX-PARTE MOTION TO COMPEL DEFENDANT'S
RESPONSES TO DISCOVERY REQUESTS**

COME NOW, Plaintiffs, **PAUL KLUGERMAN and BETHANE KLUGERMAN**, by and through her undersigned counsel and pursuant to F.R.C.P. 1.380, and hereby file this Ex-Parte Motion to Compel Defendant's Responses to Discovery Requests, and in support thereof states as follows:

1. Along with the Summons and Complaint herein, Plaintiff served upon Defendant First Request to Produce, First Request for Admissions, and First Interrogatories on September 10, 2018 (*See Exhibit A*).
2. Defendant's responses to the aforementioned discovery requests were due October 25, 2018.
3. On October 17, 2018, Defendant filed a 1st Motion for Extension of Time to respond to Plaintiff's discovery requests, requesting until November 12, 2018 to respond (*See Exhibit B*).

4. On November 12, 2018, Defendant filed a 2nd Motion for Extension of Time to respond to Plaintiff's discovery requests, requesting until December 13, 2018 to respond (*See Exhibit C*).

5. On December 13, 2018, Defendant filed a 3rd Motion for Extension of Time to respond to Plaintiff's discovery requests, requesting until January 15, 2019 to respond (*See Exhibit D*).

6. On January 15, 2019, Defendant filed a 4th Motion for Extension of Time to respond to Plaintiff's discovery requests, requesting until January 17, 2019 to respond (*See Exhibit E*).

7. Defendant has failed to respond to Plaintiff's First Interrogatories, First Request for Admissions, and First Request to Produce in a timely manner.

8. More than one hundred and seventy nine (179) days have elapsed since the service of Plaintiff's discovery requests.

9. On February 27, 2019, Plaintiff notified Defendant if responses were not received in seven (7) days Plaintiff would file this Motion.

10. Defendant has failed to object to the aforementioned discovery requests.

11. Defendant should be precluded from posing any objections, other than those based on a valid claim of privilege.

12. Plaintiff is being greatly prejudiced and unjustly prevented from properly litigating this case due to Defendant's failure to comply with the rules governing discovery.

13. Defendant's failures have forced Plaintiff to incur unnecessary expenses in preparing for this Motion.

14. Defendant should pay Plaintiff reasonable attorneys' fees and costs incurred for having to bring this Motion.

15. Plaintiff's counsel hereby certifies that a good faith effort has been made to resolve this discovery dispute without court intervention (*See Exhibit F*).

WHEREFORE, Plaintiff, **PAUL KLUGERMAN and BETHANE KLUGERMAN**, respectfully requests that this Honorable Court enter its order compelling Defendant, **AVATAR PROPERTY & CASUALTY INSURANCE COMPANY**, to file complete, verified answers to Plaintiff's First Interrogatories, responses to Plaintiff's First Request for Admissions, and produce documents responsive to Plaintiff's First Request to Produce, both without any objections excepting those based on a valid claimed privilege, within ten (10) days of the entry of the Court's order, and for any other relief as is deemed just and proper.

CERTIFICATE OF SERVICE

We hereby certify that a copy of the foregoing was served via the Florida Courts E-Filing Portal this 8th day of March, 2019, on Curt Allen, Esq., Butler Weihmuller Katz Craig LLP, 400 N Ashley Dr, Suite 2300, Tampa, FL 33602, callen@butler.legal, kwhite@butler.legal.

THE MORGAN LAW GROUP, P.A.

Attorneys for the Plaintiff
55 Merrick Way, Suite 404
Coral Gables, FL 33134
(305) 569-9900
For Service of Court Documents:
mlg_eservice@morganlawgroup.net

By: /s/ Joseph S. Lopez
Thomas J. Morgan, Jr., Esq.
Florida Bar No. 127612
Joseph S. Lopez, Esq.
Florida Bar No. 116200
jslopez@morganlawgroup.net

/hm

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

CASE NO. 2018-023492-CA-01

PAUL KLUGERMAN and
BETHANE KLUGERMAN,

Plaintiffs,

v.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

Defendant.

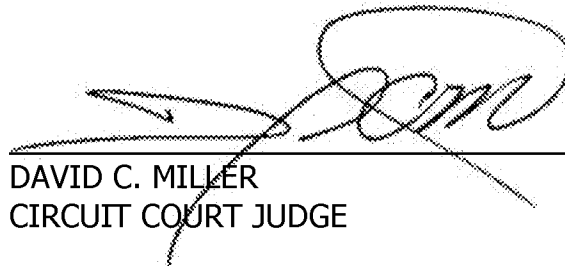
**ORDER ON PLAINTIFF'S EX-PARTE MOTION TO COMPEL
DEFENDANT'S RESPONSES TO DISCOVERY REQUESTS**

The Court having reviewed Plaintiff's Ex-Parte Motion to Compel Defendant's Responses to Discovery Requests, and after reviewing the Court file, it is hereby:

ORDERED and ADJUDGED as follows:

- (1) Plaintiff's Ex-Parte Motion to Compel Defendant's Responses to Discovery Requests is **GRANTED**.
- (2) Defendant shall have ten (10) days from the date of this Order to provide complete responses, including verified answers to interrogatories, to Plaintiff.
- (3) All objections except those based upon privilege are waived.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 03/11/19.



DAVID C. MILLER
CIRCUIT COURT JUDGE

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall

IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed and stamped original Order sent to court file by Judge Bailey's staff.

cc: Curt Allen, Esq., callen@butler.legal, kwhite@butler.legal
Joseph S. Lopez, Esq., mlg_eservice@morganlawgroup.net, jslopez@morganlawgroup.net,
hmontero@morganlawgroup.net

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

CIRCUIT CIVIL DIVISION

PAUL KLUGERMAN and
BETHANNE KLUGERMAN,

Plaintiffs,

vs.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

CASE NO: 2018-023492-CA-01

Defendant.

NOTICE OF COMPLIANCE WITH THE FEBRUARY 5, 2019, COURT ORDER

Avatar Property and Casualty Insurance Company (“Avatar”), hereby complies with the February 5, 2019, Court Order.¹

¹ On September 10, 2017, reportedly, Plaintiffs sustained a loss allegedly caused by Hurricane Irma. The policy specifically requires Plaintiffs to supply Avatar with “prompt” notice of any loss. Plaintiffs did not comply, thereby breaching the policy. Instead of supplying the required notice to Avatar, as they promised they would when they obtained insurance, Plaintiffs hired a company. On September 24, 2017, finally, Plaintiffs reported the alleged loss to Avatar. Avatar agreed to investigate, subject to a full reservation of rights, and also, the protections of section 627.426(1), Florida Statutes. But, it must be remembered that, undisputedly, the alleged loss was not timely reported, and, as noted above, the policy breached in several, other ways. Such as, the policy requires Plaintiffs to protect the property from further damage. Instead of protecting the property from further damage, Plaintiffs did nothing. They let the wet property sit, unremedied and unchecked, in Florida. In this circumstance, the law is well established that Avatar is presumed to have been prejudiced by Plaintiffs’ failure to comply with the policy, and, that it is their burden to prove Avatar was not prejudiced by their noncompliance. Then, Plaintiffs brought legal action against Avatar without first satisfying all of the conditions of the policy. Incredibly, Plaintiffs’ refusal to comply with Avatar’s requests carried over to the lawsuit. Such as, to defend itself, as is its lawful right, Avatar requested depositions. Plaintiffs have not permitted Avatar to take a single deposition. Avatar files this document, as instructed by the Court. However, given the circumstances, the witnesses and exhibits listed are speculative, at best, and, cannot be said to even approach Avatar’s final, and eventual, witnesses, or, exhibits. Avatar reserves the right to amend the witness and exhibit list after it obtains the information and documents to which it undeniably is entitled.

EXHIBITS:

1. Policy;
2. Complaint;
3. Correspondence between the parties regarding the claim;
4. Plaintiffs' discovery responses, with any attachments;
5. Defendant's discovery responses, with any attachments; and
6. All deposition transcripts, with exhibits.

BUTLER WEIHMULLER KATZ CRAIG LLP



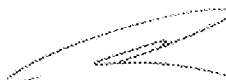
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Secondary: kwhite@butler.legal
400 North Ashley Drive, Suite 2300
Tampa, Florida 33602
Telephone: (813) 281-1900
Facsimile: (813) 281-0900
Counsel for Defendant

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to:

Thomas J. Morgan, Junior, Esquire
Morgan Law Group, P.A.
55 Merrick Way, Suite 404
Coral Gables, Florida 33134
mlg.eservice@yahoo.com

by E-Portal and E-Mail on April 26, 2019.



CURT ALLEN, ESQUIRE

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

CIRCUIT CIVIL DIVISION

PAUL KLUGERMAN and
BETHANNE KLUGERMAN,

Plaintiffs,

vs.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

CASE NO: 2018-023492-CA-01

Defendant.

_____ /

DEFENDANT'S THIRD REQUEST FOR PRODUCTION

Defendant, Avatar Property and Casualty Insurance Company, by and through its undersigned counsel, hereby requests that Plaintiffs, Paul Klugerman and Bethanne Klugerman, produce a copy of the documents and communications listed on the attached Exhibit "A" on or before **June 10, 2019**, at the offices of Butler Weihmuller Katz Craig, LLP, 400 North Ashley Drive, Suite 2300, Tampa, Florida 33602, where said documents and communications shall be left for a reasonable period of time for copying or reproduction.

Plaintiffs will be in compliance with this request for production if they provide to Avatar Property and Casualty Insurance Company's attorney, by mail, a complete and legible copy of all the requested items prior to the date fixed for production.

BUTLER WEIHMULLER KATZ CRAIG LLP




CURT ALLEN, ESQUIRE
Florida Bar No.: 0008028
callen@butler.legal
BRIAN HOHMAN, ESQUIRE
Florida Bar No.: 0764671
bhohman@butler.legal
Secondary: kwhite@butler.legal
400 North Ashley Drive, Suite 2300
Tampa, Florida 33602
Telephone: (813) 281-1900
Facsimile: (813) 281-0900
Counsel for Defendant

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to:

Thomas J. Morgan, Junior, Esquire
Joseph S. Lopez, Esquire
Morgan Law Group, P.A.
55 Merrick Way, Suite 404
Coral Gables, Florida 33134
mlg.eservice@morganlawgroup.net

by E-Portal and E-Mail on May 10, 2019.



CURT ALLEN, ESQUIRE

DEFINITIONS

1. "You" and "your" means Plaintiff, Paul Klugerman and Bethanne Klugerman, her representatives, agents and assigns.
2. The term "documents" means writings, letters, telegrams, notes, memoranda, recorded collections of conferences or telephone conversations, reports, studies, lists, any written compilation of data, bills, invoices, records, papers, books, contracts, drawings, photographs, blue prints, floor plans, animation, models, schematics, maps, videotape, mechanical or electronic recordings in any form, and all other identifiable objects upon which any inscription, handwriting, typing, printing, drawing, representation by any means, whether magnetic, electrical, photostatic, or any other form of communication is recorded, reproduced, perpetuated, maintained, or preserved.
3. The term "communications" means any transmission of information by any means, including, without limitation, by spoken language, electronic transmission of data or any other means. The term "communications" shall include, without limitation, any copies of written information received by the person or entity responding to this request, even if such person or entity is not the primary or direct addressee of such information.
4. The terms "relating to" mean referencing, demonstrating, concerning, showing, disclosing, averting to, memorializing, comprising, describing, evidencing, supporting, refuting or constituting.

EXHIBIT "A"

1. Plaintiffs' Complaint.
2. Plaintiffs' Reply to Affirmative Defenses.
3. Subject Policy between Plaintiffs and Defendant (Policy No. VH30037819).
4. Records of Azeem and Associates including Estimate of Damages and photographs.
5. Records of So. Fla. Water Restoration, Inc. including Invoices, Contracts, Estimate of Damages and photographs.
6. Any and all photographs, drawings, and/or diagrams depicting Plaintiffs' property.
7. Any and all relevant portions of the Florida Building Code.
8. Any and all relevant portions of the Florida Statutes.
9. All discovery requests, all interrogatories, all answers to interrogatories, all request for productions and responses to the same.
10. All exhibits used by the Plaintiff.
11. All charts, photographs, computer printouts, memorandums, video tapes, and diagrams utilized by any witness.
12. Any exhibits deemed necessary as a result of the discovery after the filing of this Request for Production.
13. Deposition of any and all personnel associated with the Plaintiff.
14. Any and all depositions and/or statements taken in this matter.
15. Any and all documents provided by Plaintiff during the course of discovery, including but not limited to, the documents provided in response to Defendant' request for production.
16. Photographs of the Plaintiff's home prior to property damage.
17. Photographs of the Plaintiff's home after property damage.
18. Any applicable ordinances, regulations, case law and statutes.
19. Any and all correspondence between the Defendant and the Plaintiff and/or any of her attorneys.

20. Any and all correspondence between the Defendant's agents and/or independent contractors and the Plaintiff and/or any of her attorney's.
21. Any and all impeachment exhibits discovered after the filing of this Request for Production.
22. Any and all Orders.
23. All exhibits demonstrative and evidentiary, which may be needed for impeachment and/or rebuttal.
24. Any and all exhibits and demonstrative evidence identified in the Plaintiff(s) pre-trial catalogue/witness and exhibit list.
25. Any and all damage appraisals and estimates for the property that is subject of this lawsuit.
26. Any and all papers, writings, articles and publications of those listed as witnesses on the witness list by any party.
27. Any and all responses to subpoenas which were directed to non-parties.
28. Any and all demonstrative evidence which will aid the trier of fact in understanding the testimony presented.
29. Any and all exhibits to depositions taken in this matter.
30. All deposition transcripts and exhibits for the instant case.
31. Any and all estimates/invoices prepared by Azeem and Associates.
32. Any and all estimates/invoices prepared by South Florida Water Restoration, Inc.
33. Any and all photographs taken by South Florida Water Restoration, Inc.
34. Any and all invoices for work to be done or needed to be done to Plaintiff's property as a result of the damage done from the loss.
35. Any and all estimates and/or appraisals done by any company/person assessing the loss.
36. Any and all records subpoenaed during the course of this litigation.
37. Any and all photographs, video, and/or diagrams of the subject property.

38. Any and all correspondence, communications, and documents exchanged between the Plaintiff's agents (Public adjusters, attorneys, etc.) and Defendant regarding the subject claim.

39. Any and all records of repairs to the subject property.

40. Any and all documents, photographs, invoices, summary, reports, books, articles, drawings, films, machines, equipment, videos, charts, bills, receipts, estimates, records etc., brought or produced by any and all parties or witnesses and/or experts in this case.

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

CIRCUIT CIVIL DIVISION

PAUL KLUGERMAN and
BETHANNE KLUGERMAN,

Plaintiff,

vs.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

CASE NO: 2018-023492-CA-01

Defendant.

MOTION FOR RELIEF FROM ADMISSIONS

Defendant, Avatar Property and Casualty Insurance Company (“Avatar”), pursuant to Florida Rule of Civil Procedure 1.370(b), moves for the entry of an order granting relief from technical admissions.

1. Plaintiffs served six requests for admissions, eleven interrogatories, and sixteen requests for production (“Plaintiff’s discovery”).

2. However, the due date for the responses was inadvertently overlooked. (See copy of affidavit attached as **Exhibit “A”**)

3. On May 28, 2019, Avatar filed and served its responses to Plaintiff’s discovery.

4. Avatar hereby moves for the entry of an order granting relief from the technical admissions.

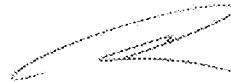
5. Florida Rule of Civil Procedure allows for liberal relief from matters technically deemed admitted, especially when the presentation of the merits of the action will be served by it. See e.g., *Sher v. Liberty Mutual Ins. Co.*, 557 So.2d 638, 639 (Fla. 3rd DCA 1990).

Ramos v. Growing Together, Inc., 672 So. 2d 103 (Fla. 4th DCA 1996), and, *Wilson v. Dept. of Admin., Div. of Retirement*, 538 So. 2d 139 (Fla. 4th DCA 1989).

6. Plaintiffs will not be prejudiced by this request.

WHEREFORE, Avatar respectfully requests the entry of an order granting relief from the technical admissions, and, all such other relief deemed appropriate.

BUTLER WEIHMULLER KATZ CRAIG LLP



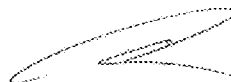
CURT ALLEN, ESQUIRE
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Florida Bar No.: 0764671
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Secondary: eservice@butler.legal
400 N. Ashley Drive, Suite 2300
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Facsimile: (813) 281-0900

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to:

Thomas J. Morgan, Junior, Esquire
Morgan Law Group, P.A.
55 Merrick Way, Suite 404
Coral Gables, Florida 33134
mlg.eservice@yahoo.com

by E-Portal and E-Mail on May 29, 2019.



CURT ALLEN, ESQUIRE

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

CIRCUIT CIVIL DIVISION

PAUL KLUGERMAN and
BETHANNE KLUGERMAN,

Plaintiff,

vs.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

CASE NO: 2018-023492-CA-01

Defendant.
_____ /

AFFIDAVIT OF ROBIN PERO

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I, ROBIN PERO, a duly authorized representative of Avatar Property and Casualty Insurance Company, do hereby declare under oath or affirmation that I have personal knowledge of the matters herein, and that the following is true and correct:

1. I am an attorney assigned to work with Curt Allen, Esquire and Brian Hohman, Esquire, counsel for Avatar Property and Casualty Insurance Company, on this case.
2. My duties include, but are not limited to, preparing discovery responses for this case.
3. Here, the deadline to respond to Plaintiffs' discovery responses was inadvertently overlooked.



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

CIRCUIT CIVIL DIVISION

PAUL KLUGERMAN and
BETHANNE KLUGERMAN,

Plaintiffs,

vs.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

CASE NO: 2018-023492-CA-01

Defendant.

MOTION TO CONTINUE TRIAL

Defendant, Avatar Property and Casualty Insurance Company (“Avatar”), moves for an order continuing the scheduled jury trial.

1. This cause has been set for jury trial, for the first time.
2. However, the case is not yet ready to be tried, for many, different reasons.
3. Reportedly, Plaintiffs own certain property located at 10025 Southwest 124th Street, in Miami, Florida.
4. At some point, Avatar began insuring the property.
5. On September 10, 2017, reportedly, Plaintiffs sustained some kind of loss, supposedly caused by Hurricane Irma.
6. The policy requires Plaintiffs to provide Avatar with “prompt” notice of any loss.
7. Undisputedly, Plaintiffs did not provide “prompt” notice, thereby breaching the policy.
8. On September 22, 2017, instead of supplying the required notice to Avatar,

as Plaintiffs promised to do when they sought out insurance,¹ Plaintiffs hired a public adjuster.

9. On September 24, 2017, finally, the loss was reported to Avatar.

10. Avatar agreed to investigate, subject to a full reservation of rights, and also, the protections of section 627.426(1), Florida Statutes.²

11. But, it must be remembered that, undisputedly, the alleged loss was not timely reported. In this circumstance, the law is well established that Avatar is presumed to have been prejudiced by the Plaintiffs' failure to comply with the policy, and, that it is Plaintiffs' burden to prove Avatar was not prejudiced by their noncompliance. See, e.g., *Kramer v. State Farm Florida Ins. Co.*, 95 So. 3d 303 (Fla. 4th DCA 2012); and, *Soronson v. State Farm Florida Ins. Co.*, 96 So. 3d 949 (Fla. 4th DCA 2012).³

12. The policy requires the Plaintiffs to protect the property from further damage.

13. Undisputedly, Plaintiffs did nothing to protect the property from further damage, thereby breaching the policy again.

14. Clearly, Avatar was prejudiced in its investigation.

15. The policy specifies:

8. Suit Against Us.

No action can be brought against us; unless:

- a. There has been full compliance with all of the terms of this policy; and
- b. The action is started within 5 years after the date of loss.

¹ "Conditions in policies of insurance are part of the consideration for assuming the risk, and the insured, by accepting the policy, becomes bound by these conditions." *Goldman v. State Farm Fire Gen. Ins. Co.*, 660 So. 2d 300, 304 (Fla. 4th DCA 1995).

² In essence, this statute allows insurers to investigate, and attempt to settle, claims without waiving any of their contractual rights, legal rights, or defenses.

³ Avatar's attorney also represented the insurer both in *Kramer*, and, in *Soronson*.

16. But, it must be remembered that, undisputedly, the policy was materially breached in several, different respects.

17. Consequently, recovery by Plaintiffs now is barred as a matter of law. See, e.g., *Progressive Express Ins. Co. v. Menendez*, 979 So. 2d 324 (Fla. 3d DCA 2008), *quashed on other grounds*, 35 So. 3d 873; *Kramer v. State Farm Florida Ins. Co.*, 95 So. 3d 303 (Fla. 4th DCA 2012); *Soronson v. State Farm Florida Ins. Co.*, 96 So. 3d 949 (Fla. 4th DCA 2012); *Starling v. Allstate Floridian Ins. Co.*, 956 So. 2d 511 (Fla. 5th DCA 2007); *Goldman*, 660 So. 2d at 300; *Swaebe v. Fed. Ins. Co.*, 2010 WL 785995 (11th Cir. Fla. 2010); *767 Building, LLC v. Allstate Ins. Co.*, 2010 WL 1796564 (S.D. Fla. 2010); *Fassi v. Am. Fire and Cas. Co.*, 700 So. 2d 51 (Fla. 5th DCA 1997); *Edwards v. State Farm Florida Ins. Co.*, 64 So. 3d 730 (Fla. 3d DCA 2011); *Gonzalez v. State Farm Florida Ins. Co.*, 65 So. 3d 608 (Fla. 3d DCA 2011); *Jacobs v. Nationwide Mut. Fire. Ins. Co.*, 2002 WL 34543222, * 7 (S.D. Fla. 2002); *Rodrigo v. State Farm Florida Ins. Co.*, 144 So. 3d 690 (Fla. 4th DCA 2014); and, *Hunt v. State Farm Florida Ins. Co.*, 145 So. 3d 210 (Fla. 4th DCA 2014); *Shaw v. State Farm Fire & Cas. Co.*, 37 So. 3d 329 (Fla. 5th DCA 2010) (disapproved on other grounds by *Nunez v. Geico Gen. Ins. Co.*, 117 So. 3d 388 (Fla. 2010)).⁴

18. On September 10, 2018, Plaintiffs served the lawsuit upon Avatar.

19. On September 28, 2018, Avatar requested the depositions of Plaintiffs and their public adjuster.

20. To date, Avatar has not be allowed to take a single deposition.

⁴ Avatar's attorneys likewise represented the insurers in *Edwards*, *Jacobs*, *Rodrigo*, *Kramer*, *Soronson*, and, *Hunt*.

21. Moreover, on November 19, 2018, Avatar filed its Motion for Summary Judgment (No Payment Owed Under Clear and Unambiguous Terms of Policy).

22. Avatar's motion for summary judgment must be heard before the matter proceeds to trial.

23. Finally, on May 28, 2019, Avatar served its discovery requests and is awaiting Plaintiffs' responses.

24. As such, the case is not yet ready to be tried.

25. Again, this cause never before has been set for trial, and, obviously, never before has had a trial continued, by either side.

26. Plaintiffs will not be prejudiced if this motion is granted.

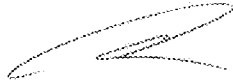
27. However, Avatar will be severely prejudiced if this motion is denied.

28. Accordingly, the trial must be continued.⁵

WHEREFORE, Avatar respectfully requests the above relief, and, all such other relief deemed appropriate.

⁵ Verification of Avatar will be filed separately upon receipt.

BUTLER WEIHMULLER KATZ CRAIG LLP



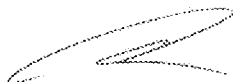
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BRIAN HOHMAN, ESQUIRE
Florida Bar No.: 0764671
bhohman@butler.legal
Secondary: kwhite@butler.legal
400 North Ashley Drive, Suite 2300
Tampa, Florida 33602
Telephone: (813) 281-1900
Facsimile: (813) 281-0900
Counsel for Defendant

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to:

Thomas J. Morgan, Jr., Esquire
Morgan Law Group, P.A.
55 Merrick Way, Suite 404
Coral Gables, Florida 33134
mlg.eservice@yahoo.com


by E-Portal and E-Mail on May 29, 2019.




CURT ALLEN, ESQUIRE



David C. Miller

 **Division:** Circuit Civil

 **Section:** CA 21

 **Court Location:** Dade County Courthouse

 **Address:** 73 West Flagler ST Miami, FL 33130

Phone: (305) 349-7074

Room: DCC 525

Judicial Assistant: Gener, Barbara

Circuit Judge: Circuit Civil Division

Documents

Biography

Alternate Judges

SETTLEMENT DISMISSAL ORDER

ATTORNEYS SCHEDULING FEE ORDER

SPECIAL SET REQUEST FORM

Oder Allowing Telephonic Hearing

NEW WITHDRAWAL ORDER

Make a selection below

Motion Calendar

Motion Calendar Information

Type: Open

Notice Before Hearing: 5 Calendar Days

Files at Hearing: None

| Day | Time | Cap | From | To |
|----------|---------|------|---------|----------|
| Tuesday | 8:00 AM | None | 3/05/18 | 12/31/19 |
| Thursday | 8:00 AM | None | 3/05/18 | 12/31/19 |

Canceled Sessions

JUL 2019

07/02/2019

AUG 2019

08/13/2019

Additional Instructions

Motion calendar hearings are limited to 5 – 10 minutes per case. As of May 28th, motion calendars start at 8:00 a.m. and end at 9:00 a.m.

Emergency Motions to Cancel a Foreclosure Sale, will be heard 7:45 am to 8:00 am Monday thru Friday.

To set a motion calendar hearing, select the date from the Court's availability (found on courtMAP). 30 Cap

Submit your supporting documents (filed motion, etc.) when creating the event (setting the hearing) on courtMAP. DO NOT create multiple events (set multiple hearings) on any one case; the system allows for two (2) motions to be set on each case.

Once a green "Success" message appears, the hearing has made calendar.

IMPORTANT: Although the movant and the parties listed on the service list will receive an email indicating that a hearing has been set, a notice of hearing will not automatically generate. The movant **MUST** e-file the notice of hearing via the e-portal system.

To confirm a hearing, click on the "docket" tab on the navigation bar and select the event date (the hearing date); the scheduled hearing will appear.

****The Court will not hear more than two (2) motions per case per motion calendar.****

To appear telephonically: A motion for telephonic appearance, along with the Court's form order must be submitted for the Court's approval via the

proposed orders option on courtMap. All Motions for Telephonic Appearance must indicate the reason why a telephonic hearing is needed. If the reason stated is that counsel has a hearing in another courthouse, the motion shall contain the name and case number of the other case. Please email the Judicial Assistant a copy of the order. Telephone hearings are done at the end of the calendar.

To cancel a motion calendar hearing:

Movants cancelling a hearing shall e-file a notice of cancellation and also cancel the hearing on courtMAP. Go to: Calendar>View Events>Click on the Case>Click on the "Status" dropdown (should appear as "Ready")>Select Cancel>Select Reason>Click on Update

If the hearing being cancelled is scheduled for the next calendar day, a copy of the notice of cancellation should be emailed to chambers (bgener@jud11.flcourts.org) as well as all relevant parties.

THE FOLLOWING MOTIONS MUST ALWAYS BE SET FOR HEARING EVEN IF AGREED TO:

1. MOTIONS TO RESCHEDULE FORECLOSURE SALES
2. MOTIONS TO CONTINUE TRIAL OR STRIKE TRIAL DATES, (Motions for continuance must indicate whether it is the first request for continuance. If it is not, the number and date of prior continuance(s) must be included in the motion.)
3. MOTIONS TO COMPEL MEDIATION
4. MOTIONS TO CANCEL SALE (Must include number of previous cancellations)
5. MOTIONS FOR WRIT OF POSSESSION

NOTE REGARDING "WALK-INS"

The Court does not allow contested/disputed "add-ons" or "walk-ins" during a motion calendar when the Court is in trial. If you are planning on "walking in" to a motion calendar with opposing counsel for a contested/disputed motion, please call the day prior to the date of the motion calendar to make sure that the Judge is not in trial.

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Court Management and Access Platform (courtMAP)

This Section is now using **courtMAP** and document submissions are no longer available via eCourtesy.

courtMAP is a new online Management and Access Platform built upon technology infrastructure from Broward's Court Management System.

[courtMAP](#) combines [eCourtesy](#) with [online scheduling](#), online notification/confirmation, and allows judges to create and e-File orders. courtMAP also allows parties to self-schedule their case events - motion calendar, special sets, and trials - and attach the documentation previously submitted via eCourtesy.

[Visit courtMAP Now](#)

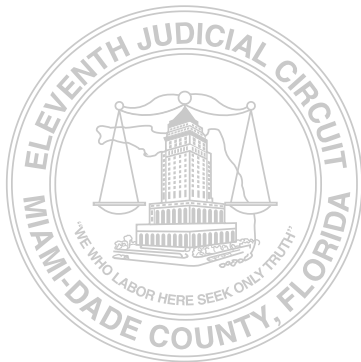
Courthouse Locations

Coral Gables Branch Courthouse
Dade County Courthouse
Hialeah Branch Courthouse
Lawson E. Thomas Courthouse Center
Miami Beach Branch Courthouse

Miami-Dade Children's Courthouse
North Dade Justice Center
Overtown Transit Village South
Richard E. Gerstein Justice Building
South Dade Justice Center

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[Court Divisions](#)
[Court Holidays/Closings](#)



ELEVENTH
JUDICIAL CIRCUIT OF FLORIDA



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

CIRCUIT CIVIL DIVISION

PAUL KLUGERMAN and
BETHANNE KLUGERMAN,

Plaintiffs,

vs.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

CASE NO: 2018-023492-CA-01

Defendant.

_____ /

NOTICE OF UNIFORM MOTION CALENDAR HEARING

Thomas J. Morgan, Jr., Esquire
Morgan Law Group, P.A.
55 Merrick Way, Suite 404
Coral Gables, Florida 33134
mlg.eservice@yahoo.com

PLEASE TAKE NOTICE that a hearing will be held before The Honorable David C. Miller, the Dade County Courthouse, 73 West Flagler Street, Room 525, Miami, Florida 33130, on **June 4, 2019, at 8:00 a.m.**, or as soon thereafter as same may be heard, on:¹

**Avatar Property and Casualty Insurance Company's
"Motion for Relief from Admissions"**

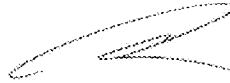
TIME RESERVED: 5 minutes.

The undersigned attorney will be / will not be securing the services of a court reporter.

PLEASE BE GOVERNED ACCORDINGLY.

¹ Pursuant to case authority, this motion is required to be brought before the Court before trial. The motion will be heard only in the event the case is called to trial this day or before the trial starts on any other day during the week that it was listed. If it is not called for trial during the designated week, it will be brought before the Court in the future.


BUTLER WEIHMULLER KATZ CRAIG LLP



CURT ALLEN, ESQUIRE
Florida Bar No.: 0008028
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BRIAN HOHMAN, ESQUIRE
Florida Bar No.: 0764671
bhohman@butler.legal
Secondary: kwhite@butler.legal
400 North Ashley Drive, Suite 2300
Tampa, Florida 33602
Telephone: (813) 281-1900
Facsimile: (813) 281-0900
Counsel for Defendant

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the above-named addressee by
E-Mail and E-Portal on May 31, 2019.



CURT ALLEN, ESQUIRE

cc: The Honorable David C. Miller
Orange Legal

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

CASE NO. 2018-023492-CA-01

PAUL KLUGERMAN and
BETHANE KLUGERMAN,

Plaintiffs,

v.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

Defendant.

**PLAINTIFFS' OMNIBUS OBJECTION TO
DEFENDANT'S UNTIMELY DISCOVERY REQUESTS**

Plaintiffs, **PAUL KLUGERMAN** and **BETHANE KLUGERMAN**, by and through their undersigned counsel and pursuant to the applicable Florida Rules of Civil Procedure, hereby file this Omnibus Objection to Defendant's Untimely Discovery Requests as follows:

1. Plaintiffs object in omnibus fashion, to all untimely discovery requests propounded by Defendant.
2. On February 5, 2109, the Court entered its Uniform Order Setting Cause for Jury Trial, Pre-Trial Conference, and Pre-Trial Instructions.
3. Said Order, at ¶9, reads: “**Discovery shall be concluded at least fifteen (15) days prior** to the first day of the trial period set forth herein. Any further discovery must be conducted by the written stipulation of all parties or leave of the Court.”
4. Under said Order, the deadline to **conclude** all discovery was May 20, 2019.

5. On May 28, 2019, Defendant propounded the following untimely discovery requests:

- A. Defendant's First Set of Interrogatories to Plaintiffs;
- B. Defendant's First Requests for Admissions;
- C. Defendant's Second Set of Interrogatories to Plaintiffs (which violates the Rule in exceeding the limits prescribed therein, by eleven (11) over-the-limit interrogatories/subparts);
- D. Notice of Production from Non-Parties;
- E. Defendant's First Request for Production;
- F. Defendant's Second Request for Production;

6. Further back in time, on May 10, 2019, Defendant propounded a "Third Request for Production"; somehow this was done before they ever propounded a "first" or "second" Request for Production.

7. Even this Third Request for Production is untimely as it was not served with enough time to meet the May 20th deadline to **conclude** discovery.

8. Defendant failed to propound its discovery requests in a timely manner and their untimely discovery requests are in violation of this Court's trial order.

WHEREFORE, Plaintiffs, **PAUL KLUGERMAN and BETHANE KLUGERMAN**, respectfully request that this Court enter an Order sustaining the foregoing Omnibus Objection and grant such other and further relief the Court deems proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served via the Florida Courts E-Filing Portal this 31st day of May, 2019 on Curt Allen, Esq., Butler Weihmuller Katz Craig LLP,

400 N. Ashley Dr, Suite 2300, Tampa, FL 33602, callen@butler.legal, kwhite@butler.legal.

By: /s/ **Thomas J. Morgan Jr.**

Thomas J. Morgan Jr, Esq.

Florida Bar No. 127612

MORGAN LAW GROUP, P.A.

Attorneys for Plaintiffs

55 Merrick Way, Suite 404

Coral Gables, Florida 33134

Phone : 305.569.9900

Fax : 305.443.6828

For service of court documents only:

mlg.eservice@morganlawgroup.net

/cc

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

CIRCUIT CIVIL DIVISION

CASE NO. 2018-023492-CA-01

PAUL KLUGERMAN and
BETHANNE KLUGERMAN,

Plaintiffs,

v.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

Defendant.

**PLAINTIFFS' RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION FOR RELIEF FROM ADMISSIONS**

Plaintiffs, PAUL KLUGERMAN and BETHANNE KLUGERMAN, by and through the undersigned counsel, hereby file their Response in Opposition to Defendant's Motion for Relief from Admissions, and as grounds therefor state as follows:

1. On September 10, 2018, Defendant was served with Plaintiffs' Request for Admissions.
2. For over eight months, Defendant failed to respond to those Requests for Admissions, as well as to the other discovery requests served by Plaintiffs, finally serving responses to discovery on May 28, 2019, three business days before the start of the trial period and well after the discovery deadline in this matter.
3. Pursuant to Fla. R. Civ. P. 1.370, if a party fails to respond to a request for admissions within thirty days of service of the request, the matter is deemed admitted and

conclusively established unless the Court permits withdrawal or amendment of the admission. The Court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved by it and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining an action or defense on the merits. Fla. R. Civ. P. 1.370(b).

4. Defendant here has filed a Motion for Relief from Admissions together with an affidavit of its counsel, stating that it “inadvertently overlooked” the due date for its response to Plaintiffs’ Request for Admissions.

5. Throughout the duration of this case, Plaintiffs have repeatedly sought to obtain Defendant’s responses to discovery. However, Defendant delayed and avoided participating in the discovery process, filing four motions for extension of time and engaged in further delays with regards to the scheduling of hearings on those motions.

6. On March 8, 2019, Plaintiffs filed an ex parte motion to compel Defendant’s responses to discovery. On May 11, 2019, this Court granted the motion and ordered the Defendant to respond to Plaintiffs’ discovery requests within ten days of the Order.

7. Defendant ignored this Court’s May 11, 2019 Order and failed to respond to Plaintiffs’ discovery requests within the time provided.

8. As noted above, Defendant’s eventual response to Plaintiffs’ Request for Admissions was only served on May 28, 2019. Given Defendant’s lack of cooperation and pattern of delay, avoidance, and willful disregard of this Court’s order regarding discovery, Defendant’s assertion that the deadlines on the discovery requests was “inadvertently overlooked” is disingenuous.

9. Although there is a liberal standard favoring allowing amendments to permit disposition on the merits, rather than on technical admissions, even that standard has its limits. *Asset Mgmt. Consultants of Virginia, Inc. v. City of Tamarac*, 913 So. 2d 1179, 1181 (Fla. 4th DCA 2005) (holding that while decisions on the merits are preferred, there is a point at which the opposing party is prejudiced by a tardy request for relief from admissions). As noted above, the plain language of Rule 1.370 only allows the withdrawal of admissions where there is no prejudice to the party who obtained the admissions.

10. Here, Plaintiffs will be substantially and unfairly prejudiced should this Court grant Defendant relief from the admissions. Defendant's response to Plaintiffs' Request for Admissions was served a mere three business days prior to the start of the trial period and well after the discovery deadline in this matter; to allow relief from the admissions would leave Plaintiffs unable to conduct discovery on specific issues central to Plaintiffs' case. Plaintiffs relied on these admissions and discovery on these issues was no longer needed once the matters were deemed admitted; Plaintiffs would without question have conducted additional specific discovery had they been provided with timely notice of Defendant's intent to deny the matters now admitted.

11. Further, the cases Defendant relies on in support of its Motion for Relief from Admissions – *Sher v. Liberty Mutual Ins. Co.*, 557 So.2d 638, 639 (Fla. 3rd DCA 1990), *Ramos v. Growing Together, Inc.*, 672 So. 2d 103 (Fla. 4th DCA 1996), and *Wilson v. Dept. of Admin., Div. of Retirement*, 538 So. 2d 139 (Fla. 4th DCA 1989) – are clearly distinguishable from the present case. None of these cases involved a party seeking relief from admissions on the eve of trial, as Defendant is attempting to do here; the cases are also further factually distinguishable.

12. In *Sher*, the defendant's response to a request for admissions was sixty days late. *Sher, supra* at 639. Here, Defendant's eventual response to Plaintiffs' Request for Admissions was

over eight months late. Further, the record in *Sher* was replete with evidence contradicting the admissions created by Sher's failure to file a timely response. *Id.* Here, all discovery responses were withheld by Defendant until May 28, 2019, essentially leaving the record devoid of any such information. Defendant should not be permitted to benefit from its own misconduct in delaying and avoiding responding to discovery.

13. Similarly, in *Ramos*, the defendant filed responses to the request of admissions thirty days after the complaint was filed. *Ramos, supra* at 104. Additionally, the defendant filed a timely motion to grant relief from the admissions. *Id.* Here, Defendant's responses to Plaintiffs' Request for Admissions and other discovery as well as its request for relief were filed exceedingly late, on the eve of trial and well after Defendant should reasonably have been aware of its supposed oversight. Defendant's arguments to the contrary are unconvincing under the circumstances.

14. Likewise, in *Wilson*, the court was clear that a liberal application of Florida Rule of Civil Procedure 1.370 is only appropriate so long as the party obtaining the admissions is not prejudiced by the withdrawal of the technical admission. *Wilson, supra* at 141. Here, as set forth above, Plaintiffs will clearly be unfairly prejudiced by the withdrawal of the admissions.

15. In summary, Defendant had more than sufficient notice that a response to Plaintiffs' request for admissions was required, yet it did nothing and waited until the eve of trial and well after the close of discovery to seek relief. Granting this relief to Defendant would result in unfair prejudice to Plaintiffs, as set forth above, and the relief requested should be denied.

WHEREFORE, Plaintiffs, PAUL KLUGERMAN and BETHANNE KLUGERMAN, respectfully submit that Defendant's Motion for Relief from Admissions should be denied.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served this 3rd day of June, 2019 via the Florida Courts E-Filing Portal on: **Curt Allen, Esq.**, Butler Weihmuller Katz Craig, LLP, 400 North Ashley Drive, Suite 2300, Tampa, Florida 33602.

By: /s/ Thomas J. Morgan, Jr.

Thomas J. Morgan, Jr., Esq.

Fla. Bar No. 127612

MORGAN LAW GROUP, P.A.

55 Merrick Way, Suite 404

Coral Gables, Florida 33134

Phone: (305) 569-9900

Fax: (305) 443-6828

E-service: mlg.eshervice@morganlawgroup.net

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

CIRCUIT CIVIL DIVISION
CASE NO:

2018-023492-CA-0
FILED
2019 JUN -4 PM 6:26

PAUL AND BETHANIE
KLUGERMAN Plaintiff(s),

vs.

AVATAR PROPERTY &
CASUALTY INSURANCE
COMPANY Defendant(s),

ORDER
GRANTING/DENYING
PLAINTIFF'S/DEFENDANT'S

- MOTION FOR RELIEF FROM ADMISSIONS
- MOTION FOR CONTINUANCE

THIS CAUSE having come on to be heard on June 4th 2019
on Plaintiff's/Defendant's Motion

MOTION FOR RELIEF FROM ADMISSIONS

and the Court having heard arguments of counsel, and being otherwise advised in the premises, it is hereupon

ORDERED AND ADJUDGED that said Motion be, and the same is hereby

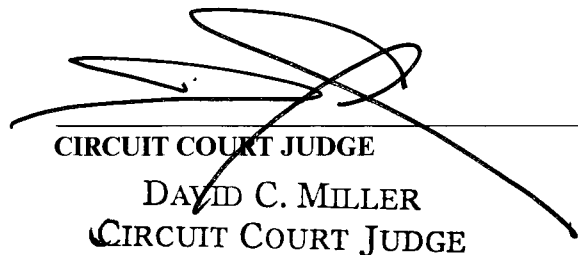
DENIED. Defendant not present in court room
by 8:45 a.m.

Defendants ~~motion~~ Motion for Continuance
is also denied.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida this 4th

day of

June, 2019


CIRCUIT COURT JUDGE
DAVID C. MILLER
CIRCUIT COURT JUDGE

Copies furnished to: Counsel of Record

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

CIRCUIT CIVIL DIVISION

PAUL KLUGERMAN and
BETHANNE KLUGERMAN,

Plaintiffs,

vs.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

CASE NO: 2018-023492-CA-01

Defendant.

_____ /

MOTION FOR RECONSIDERATION

Defendant, Avatar Property and Casualty Insurance Company (“Avatar”), hereby requests the Court reconsider its June 4, 2019, rulings.

1. Previously, Avatar filed a “Motion for Relief from Admissions” (“Motion for Relief”). (Copy of motion attached as **Exhibit “A”**)
2. Also, Avatar filed a “Motion to Continue Trial.” (Copy of motion attached as **Exhibit “B”**)¹
3. The Court announced that the trial on the case would begin on June 4, 2019.
4. Given that, and that the Motion for Relief must be heard before trial based on the well established case authority, Avatar filed a “Notice of Hearing,” that was conditioned on the trial going forward on June 4, 2019, making clear that it would be heard that day, if and only if, the trial went forward on the scheduled date. (Copy of notice attached as

¹ The same day, Avatar filed a “Verification of Avatar Property and Casualty Insurance Company” as required. (Copy of verification attached as **Exhibit “C”**)

Exhibit “D”)

5. Subsequently, the Court did not require Avatar, or its counsel, to appear on June 4, 2019, for trial.

6. Accordingly, there would be no hearing on the Motion for Relief.

7. Therefore, Avatar scheduled a hearing on the Motion for Relief on June 11, 2019. (Copy of notice attached as **Exhibit “E”**)²

8. Much to the surprise of Avatar, and its counsel, on June 4, 2019, the Court conducted a hearing on the Motion for Relief anyways, without Avatar, or its counsel, being present. (Copy of order attached as **Exhibit “F”**)

9. During the hearing, the substance of the case was discussed without Avatar’s knowledge or consent, *ex parte*.

10. To make matters worse, the Court took up and ruled upon Avatar’s “Motion to Continue Trial” even though it was not even conditionally set for hearing, and, without Avatar, or its counsel, being present. (See Exhibit “F”)

11. Again, the substance of the case was discussed without Avatar’s knowledge or consent, *ex parte*.

12. To make matters even worse, Avatar has been made aware of this Court’s apparent distaste for insurance companies. *See Great Am. Ins. Co. of New York v. 2000 Island Blvd. Condo. Ass’n, Inc.*, 153 So. 3d 384 (Fla. 3d DCA 2014).³

13. This case has been pending for a little over eight months; is set for trial for the first time; has been scheduled for trial for only about four months; and, without any

² The hearing was later cancelled after Avatar learned what occurred on June 4, 2019.

³ Avatar has filed also a “Motion for Judicial Disqualification.”

depositions or substantive written discovery having taken place.

14. This case should be tried, as the courts favor, on its merits, not on technical admissions. See e.g., *Sher v. Liberty Mutual Ins. Co.*, 557 So.2d 638 (Fla. 3rd DCA 1990); *Ramos v. Growing Together, Inc.*, 672 So. 2d 103 (Fla. 4th DCA 1996), and, *Wilson v. Dept. of Admin., Div. of Retirement*, 538 So. 2d 139 (Fla. 4th DCA 1989).

15. Respectfully, Avatar requests the Court reconsider its June 4, 2019, rulings; allow Avatar's motions to be heard; and, all other relief the Court deems appropriate.

WHEREFORE, Avatar respectfully requests the above relief, and, all such other relief deemed appropriate.

BUTLER WEIHMULLER KATZ CRAIG LLP



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Facsimile: (813) 281-0900
Counsel for Defendant

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to:

Thomas J. Morgan, Jr., Esquire
Joseph Lopez, Esquire
Morgan Law Group, P.A.
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Coral Gables, Florida 33134
mlg.eservice@morganlawgroup.net
jslopez@morganlawgroup.net

by E-Portal and E-Mail on June 6, 2019.



CURT ALLEN, ESQUIRE

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

CIRCUIT CIVIL DIVISION

PAUL KLUGERMAN and
BETHANNE KLUGERMAN,

Plaintiff,

vs.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

CASE NO: 2018-023492-CA-01

Defendant.

MOTION FOR RELIEF FROM ADMISSIONS

Defendant, Avatar Property and Casualty Insurance Company (“Avatar”), pursuant to Florida Rule of Civil Procedure 1.370(b), moves for the entry of an order granting relief from technical admissions.

1. Plaintiffs served six requests for admissions, eleven interrogatories, and sixteen requests for production (“Plaintiff’s discovery”).

2. However, the due date for the responses was inadvertently overlooked. (See copy of affidavit attached as **Exhibit “A”**)

3. On May 28, 2019, Avatar filed and served its responses to Plaintiff’s discovery.

4. Avatar hereby moves for the entry of an order granting relief from the technical admissions.

5. Florida Rule of Civil Procedure allows for liberal relief from matters technically deemed admitted, especially when the presentation of the merits of the action will be served by it. See e.g., *Sher v. Liberty Mutual Ins. Co.*, 557 So.2d 638, 639 (Fla. 3rd DCA 1990).

EXHIBIT

A

Ramos v. Growing Together, Inc., 672 So. 2d 103 (Fla. 4th DCA 1996), and, *Wilson v. Dept. of Admin., Div. of Retirement*, 538 So. 2d 139 (Fla. 4th DCA 1989).

6. Plaintiffs will not be prejudiced by this request.

WHEREFORE, Avatar respectfully requests the entry of an order granting relief from the technical admissions, and, all such other relief deemed appropriate.

BUTLER WEIHMULLER KATZ CRAIG LLP



CURT ALLEN, ESQUIRE
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Facsimile: (813) 281-0900

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to:

Thomas J. Morgan, Junior, Esquire
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55 Merrick Way, Suite 404
Coral Gables, Florida 33134
mlg.eservice@yahoo.com

by E-Portal and E-Mail on May 29, 2019.



CURT ALLEN, ESQUIRE

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

CIRCUIT CIVIL DIVISION

PAUL KLUGERMAN and
BETHANNE KLUGERMAN,

Plaintiff,

vs.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

CASE NO: 2018-023492-CA-01

Defendant.

AFFIDAVIT OF ROBIN PERO

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I, ROBIN PERO, a duly authorized representative of Avatar Property and Casualty Insurance Company, do hereby declare under oath or affirmation that I have personal knowledge of the matters herein, and that the following is true and correct:

1. I am an attorney assigned to work with Curt Allen, Esquire and Brian Hohman, Esquire, counsel for Avatar Property and Casualty Insurance Company, on this case.
2. My duties include, but are not limited to, preparing discovery responses for this case.
3. Here, the deadline to respond to Plaintiffs' discovery responses was inadvertently overlooked.



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

CIRCUIT CIVIL DIVISION

PAUL KLUGERMAN and
BETHANNE KLUGERMAN,

Plaintiff,

vs.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

CASE NO: 2018-023492-CA-01

Defendant.

_____ /

MOTION FOR RELIEF FROM ADMISSIONS

Defendant, Avatar Property and Casualty Insurance Company (“Avatar”), pursuant to Florida Rule of Civil Procedure 1.370(b), moves for the entry of an order granting relief from technical admissions.

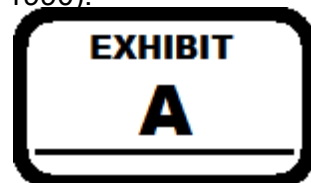
1. Plaintiffs served six requests for admissions, eleven interrogatories, and sixteen requests for production (“Plaintiff’s discovery”).

2. However, the due date for the responses was inadvertently overlooked. (See copy of affidavit attached as **Exhibit “A”**)

3. On May 28, 2019, Avatar filed and served its responses to Plaintiff’s discovery.

4. Avatar hereby moves for the entry of an order granting relief from the technical admissions.

5. Florida Rule of Civil Procedure allows for liberal relief from matters technically deemed admitted, especially when the presentation of the merits of the action will be served by it. See e.g., *Sher v. Liberty Mutual Ins. Co.*, 557 So.2d 638, 639 (Fla. 3rd DCA 1990).



as Plaintiffs promised to do when they sought out insurance,¹ Plaintiffs hired a public adjuster.

9. On September 24, 2017, finally, the loss was reported to Avatar.

10. Avatar agreed to investigate, subject to a full reservation of rights, and also, the protections of section 627.426(1), Florida Statutes.²

11. But, it must be remembered that, undisputedly, the alleged loss was not timely reported. In this circumstance, the law is well established that Avatar is presumed to have been prejudiced by the Plaintiffs' failure to comply with the policy, and, that it is Plaintiffs' burden to prove Avatar was not prejudiced by their noncompliance. See, e.g., *Kramer v. State Farm Florida Ins. Co.*, 95 So. 3d 303 (Fla. 4th DCA 2012); and, *Soronson v. State Farm Florida Ins. Co.*, 96 So. 3d 949 (Fla. 4th DCA 2012).³

12. The policy requires the Plaintiffs to protect the property from further damage.

13. Undisputedly, Plaintiffs did nothing to protect the property from further damage, thereby breaching the policy again.

14. Clearly, Avatar was prejudiced in its investigation.

15. The policy specifies:

8. Suit Against Us.

No action can be brought against us; unless:

- a. There has been full compliance with all of the terms of this policy; and
- b. The action is started within 5 years after the date of loss.

¹ "Conditions in policies of insurance are part of the consideration for assuming the risk, and the insured, by accepting the policy, becomes bound by these conditions." *Goldman v. State Farm Fire Gen. Ins. Co.*, 660 So. 2d 300, 304 (Fla. 4th DCA 1995).

² In essence, this statute allows insurers to investigate, and attempt to settle, claims without waiving any of their contractual rights, legal rights, or defenses.

³ Avatar's attorney also represented the insurer both in *Kramer*, and, in *Soronson*.

16. But, it must be remembered that, undisputedly, the policy was materially breached in several, different respects.

17. Consequently, recovery by Plaintiffs now is barred as a matter of law. See, e.g., *Progressive Express Ins. Co. v. Menendez*, 979 So. 2d 324 (Fla. 3d DCA 2008), *quashed on other grounds*, 35 So. 3d 873; *Kramer v. State Farm Florida Ins. Co.*, 95 So. 3d 303 (Fla. 4th DCA 2012); *Soronson v. State Farm Florida Ins. Co.*, 96 So. 3d 949 (Fla. 4th DCA 2012); *Starling v. Allstate Floridian Ins. Co.*, 956 So. 2d 511 (Fla. 5th DCA 2007); *Goldman*, 660 So. 2d at 300; *Swaebe v. Fed. Ins. Co.*, 2010 WL 785995 (11th Cir. Fla. 2010); *767 Building, LLC v. Allstate Ins. Co.*, 2010 WL 1796564 (S.D. Fla. 2010); *Fassi v. Am. Fire and Cas. Co.*, 700 So. 2d 51 (Fla. 5th DCA 1997); *Edwards v. State Farm Florida Ins. Co.*, 64 So. 3d 730 (Fla. 3d DCA 2011); *Gonzalez v. State Farm Florida Ins. Co.*, 65 So. 3d 608 (Fla. 3d DCA 2011); *Jacobs v. Nationwide Mut. Fire. Ins. Co.*, 2002 WL 34543222, * 7 (S.D.Fla. 2002); *Rodrigo v. State Farm Florida Ins. Co.*, 144 So. 3d 690 (Fla. 4th DCA 2014); and, *Hunt v. State Farm Florida Ins. Co.*, 145 So. 3d 210 (Fla. 4th DCA 2014); *Shaw v. State Farm Fire & Cas. Co.*, 37 So. 3d 329 (Fla. 5th DCA 2010) (disapproved on other grounds by *Nunez v. Geico Gen. Ins. Co.*, 117 So. 3d 388 (Fla. 2010)).⁴

18. On September 10, 2018, Plaintiffs served the lawsuit upon Avatar.

19. On September 28, 2018, Avatar requested the depositions of Plaintiffs and their public adjuster.

20. To date, Avatar has not be allowed to take a single deposition.

⁴ Avatar's attorneys likewise represented the insurers in *Edwards*, *Jacobs*, *Rodrigo*, *Kramer*, *Soronson*, and, *Hunt*.

21. Moreover, on November 19, 2018, Avatar filed its Motion for Summary Judgment (No Payment Owed Under Clear and Unambiguous Terms of Policy).

22. Avatar's motion for summary judgment must be heard before the matter proceeds to trial.

23. Finally, on May 28, 2019, Avatar served its discovery requests and is awaiting Plaintiffs' responses.

24. As such, the case is not yet ready to be tried.

25. Again, this cause never before has been set for trial, and, obviously, never before has had a trial continued, by either side.

26. Plaintiffs will not be prejudiced if this motion is granted.

27. However, Avatar will be severely prejudiced if this motion is denied.

28. Accordingly, the trial must be continued.⁵

WHEREFORE, Avatar respectfully requests the above relief, and, all such other relief deemed appropriate.

⁵ Verification of Avatar will be filed separately upon receipt.

BUTLER WEIHMULLER KATZ CRAIG LLP



CURT ALLEN, ESQUIRE
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Telephone: (813) 281-1900
Facsimile: (813) 281-0900
Counsel for Defendant

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to:

Thomas J. Morgan, Jr., Esquire
Morgan Law Group, P.A.
55 Merrick Way, Suite 404
Coral Gables, Florida 33134
mlg.eservice@yahoo.com

by E-Portal and E-Mail on May 29, 2019.



CURT ALLEN, ESQUIRE

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

CIRCUIT CIVIL DIVISION

PAUL KLUGERMAN and
BETHANNE KLUGERMAN,

Plaintiffs,

vs.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

CASE NO: 2018-023492-CA-01

Defendant.

VERIFICATION OF AVATAR PROPERTY AND CASUALTY INSURANCE COMPANY

I, Sarah McDonald a duly authorized representative of Avatar Property
and Casualty Insurance Company, do hereby consent to continuing the June 3, 2019, trial.

Sarah McDonald

Sarah McDonald

PRINTED NAME

AVATAR PROPERTY AND CASUALTY
INSURANCE COMPANY



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

CIRCUIT CIVIL DIVISION

PAUL KLUGERMAN and
BETHANNE KLUGERMAN,

Plaintiffs,

vs.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

CASE NO: 2018-023492-CA-01

Defendant.

NOTICE OF UNIFORM MOTION CALENDAR HEARING

Thomas J. Morgan, Jr., Esquire
Morgan Law Group, P.A.
55 Merrick Way, Suite 404
Coral Gables, Florida 33134
mlg.eservice@yahoo.com

PLEASE TAKE NOTICE that a hearing will be held before The Honorable David C.
Miller, the Dade County Courthouse, 73 West Flagler Street, Room 525, Miami, Florida
33130, on **June 4, 2019, at 8:00 a.m.**, or as soon thereafter as same may be heard, on:¹

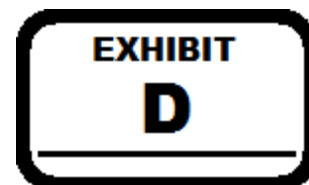
**Avatar Property and Casualty Insurance Company's
"Motion for Relief from Admissions"**

TIME RESERVED: 5 minutes.

The undersigned attorney will be / will not be securing the services of a
court reporter.

PLEASE BE GOVERNED ACCORDINGLY.

¹ Pursuant to case authority, this motion is required to be brought before the Court before trial. The motion will be heard only in the event the case is called to trial this day or before the trial starts on any other day during the week that it was listed. If it is not called for trial during the designated week, it will be brought before the Court in the future.



BUTLER WEIHMULLER KATZ CRAIG LLP



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Facsimile: (813) 281-0900
Counsel for Defendant

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the above-named addressee by
E-Mail and E-Portal on May 31, 2019.



CURT ALLEN, ESQUIRE

cc: The Honorable David C. Miller
Orange Legal

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

CIRCUIT CIVIL DIVISION

PAUL KLUGERMAN and
BETHANNE KLUGERMAN,

Plaintiffs,

vs.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

CASE NO: 2018-023492-CA-01

Defendant.
_____ /

NOTICE OF UNIFORM MOTION CALENDAR HEARING

Thomas J. Morgan, Jr., Esquire
Morgan Law Group, P.A.
55 Merrick Way, Suite 404
Coral Gables, Florida 33134
mlg.eservice@yahoo.com

PLEASE TAKE NOTICE that a hearing will be held before The Honorable David C.
Miller, the Dade County Courthouse, 73 West Flagler Street, Room 525, Miami, Florida
33130, on **June 11, 2019, at 8:00 a.m.**, or as soon thereafter as same may be heard, on:¹

**Avatar Property and Casualty Insurance Company's
"Motion for Relief from Admissions"**

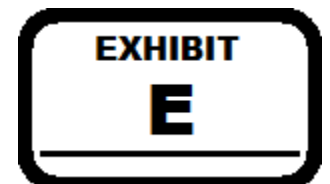
TIME RESERVED: 5 minutes.

The undersigned attorney will be / will not be securing the services of a
court reporter.

PLEASE BE GOVERNED ACCORDINGLY.

BUTLER WEIHMULLER KATZ CRAIG LLP

¹ Pursuant to case authority, this motion is required to be brought before the Court before trial. If this
matter is called to trial on June 10, 2019, then it will be heard before trial. Otherwise, the hearing will
remain scheduled for June 11, 2019.





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Counsel for Defendant

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the above-named addressee by
E-Mail and E-Portal on June 4, 2019.



CURT ALLEN, ESQUIRE

cc: The Honorable David C. Miller
Orange Legal

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

CIRCUIT CIVIL DIVISION
CASE NO:

2018-023492-CA-01

PAUL AND BETHANIE
KLUGERMAN Plaintiff(s),

vs.

AVATAR PROPERTY &
CASUALTY INSURANCE
COMPANY Defendant(s),

ORDER
GRANTING/DENYING
PLAINTIFF'S/DEFENDANT'S

- MOTION FOR RELIEF FROM ADMISSIONS
- MOTION FOR CONTINUANCE

THIS CAUSE having come on to be heard on June 4th 2019
on Plaintiff's/Defendant's Motion

MOTION FOR RELIEF FROM ADMISSIONS

and the Court having heard arguments of counsel, and being otherwise advised in the premises, it is hereupon

ORDERED AND ADJUDGED that said Motion be, and the same is hereby

DENIED. Defendant not present in court room
by 8:45 a.m.

Defendants ~~amended~~ Motion for Continuance
is also denied.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida this 4th

day of

June, 2019



CIRCUIT COURT JUDGE

DAVID C. MILLER
CIRCUIT COURT JUDGE

Copies furnished to: Counsel of Record



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

CIRCUIT CIVIL DIVISION

PAUL KLUGERMAN and
BETHANNE KLUGERMAN,

Plaintiffs,

vs.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

CASE NO: 2018-023492-CA-01

Defendant.

_____ /

MOTION FOR JUDICIAL DISQUALIFICATION

Defendant, Avatar Property and Casualty Insurance Company (“Avatar”), in accordance with, and pursuant to, Florida Rule of Judicial Administration 2.330, hereby respectfully requests that the Court timely enter an order of disqualification, and it proceed no further.

I. Introduction

On June 4, 2019, the Court engaged in *ex-parte* communications with Plaintiffs’ lawyer about the subject matter of the litigation without the consent of Avatar. In fact, not only did the Court have *ex-parte* communications with Plaintiffs’ lawyer about the subject matter of the litigation, it ruled on multiple motions filed by Avatar.

The *ex-parte* discussion alone mandates disqualification as a matter of law.

II. Standard of Review

Florida Rule of Judicial Administration 2.330(f) specifies:

(f) Determination – Initial Motion. The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If the motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion.

(Emphasis in original) Further, the law is well-established, and has been for decades, that an allegation of *ex-parte* communication is legally sufficient, in and of itself, to require immediate judicial disqualification. See, e.g, *Robbins v. Robbins*, 742 So. 2d 395 (Fla. 2d DCA 1999); *Pearson v. Pearson*, 870 So. 2d 248 (Fla. 2d DCA 2004); and *Brake v. Murphy*, 693 So. 2d 663 (Fla. 3d DCA 1997).

Accordingly, the Court must immediately enter an order of disqualification, and it can proceed no further.

III. Background

In this cause, Avatar filed “Motion for Relief from Admissions.” In addition, Avatar filed a verified “Motion to Continue Trial.” On June 4, 2019, the Court called up both motions. Plaintiffs’ counsel was present. Neither Avatar nor its counsel were present. The Court made no attempts to contact Avatar’s counsel to have it participate in the hearing. The Court went on to discuss the subject matter of the case; ruled on both motions; had opposing counsel complete an order; and, sign the order, all without the knowledge or consent of Avatar and its counsel.

Avatar first found out about all of this later in the day on June 4, 2019, when opposing counsel sent Avatar’s counsel an e-mail advising of what had occurred and

attaching the executed order. Again, this Court had an *ex parte* discussion about the case, without the knowledge or consent of Avatar and its counsel.

IV. Bases of Motion

Avatar is moving for disqualification based on the Court having extensive *ex-parte* communications with Plaintiffs' lawyer, hearing motions *ex-parte*, and, making rulings *ex-parte*.

For all of these reasons, Avatar and its attorneys do not believe the Court is fair and impartial, believe the Court is biased against them in favor of Plaintiffs and their lawyer, and, do not believe that it will be afforded justice, for impermissible reasons having nothing to do with the merits of the case.

V. Argument

Little more needs to be said. As was noted above, the law is well-established that a motion for judicial disqualification based on *ex-parte* communications, in and of itself, is legally sufficient, and disqualification is mandated. See, e.g., *Robbins*, 742 So. 2d at 395; *Pearson*, 870 So. 2d at 248; and *Brake*, 693 So. 2d at 663.

Simply put, the motion for disqualification must be granted.

As stated by the Florida Supreme Court - "Prejudice of a judge is a delicate question to raise, but, when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge against whom raised should be prompt to recuse himself. No judge under any circumstances is warranted in sitting in the trial of a cause whose neutrality is shadowed or even questioned." *Dickenson v. Parks*, 104 Fla. 577, 582; 140 So. 459, 462 (Fla. 1932).

“The basic tenet for disqualification is justice must satisfy the appearance of justice. This tenet must be followed even if the record is lacking of any actual bias or prejudice on the judge’s part, and even though this stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties.” *Kielbania v. Jasberg*, 744 So. 2d 1027, 1028 (Fla. 4th DCA 1997). (Citations omitted)

“[Florida Rule of Judicial Administration] 2.330(f) requires a judge to enter an order granting disqualification if the motion to disqualify is ‘legally sufficient.’ The motion is legally sufficient if it shows the party’s well-grounded fear that the party will not receive a fair trial. It is not a question of what the judge feels, but the feeling in the mind of the party seeking to disqualify and the basis for that feeling. The facts underlying the well-grounded fear must be judged from the perspective of the moving party.” *Aberdeen Property Owners Ass’n, Inc. v. Bristol Lakes Homeowners Ass’n, Inc.*, 8 So. 3d 469, 471 (Fla. 4th DCA 2009). (Citations omitted) “The question of disqualification focuses on those matters from which a litigant may reasonably question a judge’s impartiality rather than the judge’s perception of his ability to act fairly and impartiality.” *Wargo v. Wargo*, 669 So. 2d 1123, 1124 (Fla. 4th DCA 1996). “If a judge’s prejudice is predicated on grounds with a modicum of reason, the judge should promptly recuse.” *Aberdeen Property Owners Ass’n, Inc.*, 8 So. 3d at 472.

There can be no question about the legal sufficiency of the present motion. Hence, respectfully, pursuant to Florida Rule of Judicial Administration 2.330, the Court must enter an order of disqualification and proceed no further. *Ennis v. Ennis*, 855 So. 2d 229 (Fla. 5th DCA 2003); *Shands Teaching Hospital and Clinics, Inc. v. Samuel, et al*, 926

So. 2d 441 (Fla. 1st DCA 2006); *Marshall v. Bookstein*, 789 So. 2d 455 (Fla. 4th DCA 2001); *Kates v. Siedenman*, 881 So. 2d 56 (Fla. 4th DCA 2004); *Royal Caribbean Cruises, LTD v. Doe*, 767 So. 2d 626 (Fla. 3d DCA 2000); *NRD Investments, Inc. v. Velazquez*, 965 So. 2d 304 (Fla. 3d DCA 2007); and, *Irwin v. Marko*, 417 So. 2d 1108 (Fla. 4th DCA 1982).

Importantly, as Florida Rule of Judicial Administration 2.330(f) makes crystal clear, the Court “shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action.”

Hence, the Court cannot dispute the allegations of the motion, add “facts,” clarify any point, or, do anything, at all, to address the allegations. It can only determine if the motion is legally sufficient. And, once again, any motion to disqualify based on the foregoing grounds is, as a matter of law, legally sufficient. See, e.g, *Robbins*, 742 So. 2d at 395; *Pearson*, 870 So. 2d at 248; and *Brake*, 693 So. 2d at 663.

In addition, Avatar has learned another disturbing fact. This Court previously has made multiple comments, many directed to insurance companies, in other matters. When the insurance company moved to disqualify this Court, the presiding Court refused to remove himself from the case. Hence, the insurance company appealed. The Third District Court of Appeal reversed the trial court order, ordered the presiding Court to be removed from the case, and listed half a dozen or more instances that warranted disqualification from the case. See *Great Am. Ins. Co. of New York v. 2000 Island Blvd. Condo. Ass'n, Inc.*, 153 So. 3d 384, 385 (Fla. 3d DCA 2014) (“It has long been said in the courts of this state that ‘every litigant is entitled to nothing less than the cold neutrality of an impartial judge.’ *State*

ex rel. Davis v. Parks, 141 Fla. 516, 194 So. 613, 615 (1939). Regrettably, the trial judge in this case has abandoned his post as a neutral overseer of the dispute between the parties, compelling us to grant Great American Insurance Company's Petition for a Writ of Prohibition")

A legally sufficient motion must be granted. And, as noted above, an allegation of *ex-parte* communication is legally sufficient and must be granted. Now, knowing the events discussed above, and this Court's prior actions in similar situations, Avatar does not believe that it will be treated fairly and impartially in this Court.

Accordingly, the Court must enter an order of disqualification and proceed no further.

VI. Conclusion

For all of the reasons above, the Court must enter an order of disqualification and proceed no further.

WHEREFORE, Avatar respectfully requests the above relief, and all such other relief deemed appropriate.

BUTLER WEIHMULLER KATZ CRAIG LLP



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Facsimile: (813) 281-0900
Counsel for Defendant

CERTIFICATE OF GOOD FAITH

I certify that the foregoing motion, and the statements of Maria Mousseau and Brian Hohman, both duly authorized representatives of Avatar, set forth in their affidavits in support of the motion, filed separately but contemporaneously as permitted by Florida Rule of Judicial Administration 2.330(c)(3), are made in good faith, after careful consideration and deliberation.



BRIAN HOHMAN, ESQUIRE

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to:

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by E-Portal and E-Mail; and,

The Honorable David C. Miller
Circuit Court Judge
Dade County Courthouse
73 West Flagler Street, Room 525
Miami, Florida 33130-1731
dmiller@jud11.flcourts.org

by E-Mail, E-Portal, and, Overnight Mail on June 6, 2019.



CURT ALLEN, ESQUIRE



User Name: gray Proctor

Date and Time: Saturday, June 8, 2019 9:55:00 AM EDT

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Document (1)

1. [Lawyers Debate Cole Scott's Move to Throw Judge David Miller Off Cases](#)

Client/Matter: -None-

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Search Type: Natural Language

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US Legal News

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-None-

Lawyers Debate Cole Scott's Move to Throw Judge David Miller Off Cases

Florida Business Review (Online)

April 23, 2018 Monday

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Length: 1076 words

Body

Judge David C. Miller. Photo: J. Albert Diaz/ALM.

Attorneys are debating whether Cole, Scott & Kissane is "judge shopping" as it attempts to [*remove a Miami-Dade jurist*](#) from dozens of cases.

Cole Scott, Florida's largest insurance defense firm with 11 offices, has entered 38 motions to disqualify Miami-Dade Circuit Judge David C. Miller from its cases after one of its attorneys filed to run against him in the August primary election.

The move has prompted claims the law firm is using its deep pockets to strategically throw a sitting judge off its litigation by pitting one of its lawyers against him in the political arena. It also caused an uproar among plaintiffs lawyers, who say they would have to start over before new judges in dozens of cases if Cole Scott succeeds.

"I don't think this has ever happened," said veteran Miami attorney Joel S. Perwin, a former 22-year shareholder at Podhurst Orseck, who is involved in one of the 38 cases. "We didn't do anything wrong, and Judge Miller didn't do anything wrong. The entire basis for the motion was created by the moving party, and that's why it's a significant issue."

Cole Scott filed 33 motions to disqualify Miller and five sua sponte recusal requests.

The motions follow Cole Scott partner [Elisabeth M. Espinosa](#)'s April 5 filing to challenge Miller for the seat in Division 8.

Questions are swirling about why Espinosa chose to run against a judge handling dozens of the firm's cases, and why the firm moved to disqualify Miller nearly a month before the May 4 filing deadline when Espinosa would become an official candidate.

Managing partner Richard Cole told the Daily Business Review on Friday that the firm met with its clients as soon as Espinosa relayed her intention to run for public office. He said what followed came from clients - and not the firm - as they sought to exercise their right to disqualify a potentially biased judge under [Florida's Rules of Judicial Administration](#).

"These issues are really client issues, not lawyer issues. Certain of the clients felt that they would not receive a fair trial in front of the current judge if one of the Cole Scott lawyers was running against that judge," Cole said. "They instructed us to file a motion asking the judge to recuse himself."

As for the challenge to Miller, a judge presiding over dozens of Cole Scott cases, Cole suggested the firm would face a similar situation with any incumbent.

"We're the largest insurance defense firm in the state of Florida, so to have 30 cases in front of any judge is not surprising. That would be rather standard," he said. "I have no way to control where Ms. Espinosa runs for judge. ... That's her decision."

MEET THE CHALLENGER

The firm's website listed Espinosa an associate earlier this month, but it now describes her as a partner. Cole said Friday that Espinosa became a nonequity partner "recently" but "not this week." He declined to elaborate.

Critics say Cole Scott promoted Espinosa to bolster its bid for Miller's removal by arguing a firm with a partner - not an associate - running against a judge would likely face unfair rulings.

"This has much broader implications. The motions for recusal have very little to do with the actions of Judge Miller," said plaintiffs lawyer Victor M. Diaz Jr., who filed a cross-motion in one of the cases, in an attempt to exclude Cole Scott from the litigation. "It's scary. It's an attack on the independence of the judiciary and an attempt to intimidate state court judges that are subject to election or re-election. It should be offensive to every member of the bar, of concern to all lawyers and every sitting circuit court judge."

Espinosa became a member of the Florida Bar in 2007, about a year after she graduated from Stetson University College of Law. She also practices in federal court.

[*Her resume*](#) shows she began her career in Banco Santander International's legal department, served as an assistant state attorney in Tampa for nearly six years and joined

Cole Scott in 2014. She is a partner in the firm's civil litigation department, focusing on defense work in premises liability suits.

Espinosa did not respond to a request for comment by deadline.

"She is a well-established trial lawyer who has decided there is a calling in her life for public service," Cole said.

Plaintiffs lawyers who knew her said Espinosa is a "well-qualified" attorney, but said her candidacy seemed like a political gambit.

"I believe their filing grounds to recuse Judge Miller is nonsense," said Mintz Truppman partner Mark J. Mintz, who is litigating a case against a Cole Scott corporate client that did not submit a motion to remove the judge.

Here's how Mintz explained the difference between his case and the others: "In cases where they represent a defendant in a car accident, the law firm can just ask the individual to sign the affidavit, and then file it. In this case, they would have had to have asked (client) Lexington Insurance Co. to go ahead with their nonsense."

MILLER'S LAST RACE

Miller was elected in 2000 and took office in 2001. He won re-election in 2012 for a term that expires in January.

This election will likely be his last.

At 64, Miller would have to retire in about six years under a Florida law that requires judges to retire at 70. A constitutional amendment set for a November vote could extend the mandatory retirement age to 75.

"This would be my last term if I get reelected," Miller told the Daily Business Review. He declined to comment further about the race.

The rules of judicial ethics prevent judges from commenting on pending cases, but [*Miller has denied all 38 Cole Scott & Kissane motions*](#) to remove him.

He also denied two motions from opposing counsel asking the judge to throw Cole Scott off their cases.

The firm filed a challenge of one of Miller's denials. It got [*an order from Florida's Third District Court of Appeal*](#), which stayed the litigation in the lower court and issued an order requiring an explanation for why Miller should not step down.

Brett Panter, one of the plaintiffs attorney in that case, questioned the timing of the motions. Both sides had pending motions for summary judgment and expected a ruling Friday. But Cole Scott filed an emergency motion to delay the trial, followed days later by a motion to recuse the judge.

"Justice delayed is a terrible thing," Panter said. "It affects everybody because there is a delay. We have a very seasoned judge. ... There is no reason to disqualify him."

Load-Date: May 2, 2018

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

CIRCUIT CIVIL DIVISION

FERNANDO PRACA and
GABRIELA PRACA,

Plaintiffs,

vs.

SAFEPOINT INSURANCE COMPANY,

CASE NO: 2018-013490-CA-01

Defendant.

_____ /

**MOTION FOR PROTECTIVE ORDER, AND,
REQUEST FOR CONSIDERATION OF THE IMPOSITION OF SANCTIONS**

Defendant, SafePoint Insurance Company (“SafePoint”), hereby moves for the entry of a protective order, and, respectfully requests the Court consider the imposition of sanctions against Plaintiffs and/or their lawyer for conduct that is unprofessional, violative of the standards of the Miami-Dade County Bar Association, and, simply inexcusable.

1. On May 17, 2018, Plaintiffs served the Complaint.
2. The lawsuit was unfounded, and unsupported.
3. Hence, as was its lawful right, SafePoint requested certain depositions in order to defend itself.
4. On June 20, 2018, Plaintiffs filed their “Plaintiff’s [sic] Motion for Protective Order as to the Deposition of Multiple Corporate Representatives of Florida Public Adjusting.”

5. On September 7, 2018, Plaintiffs filed their “Plaintiffs’ Motion to Advance Trial on Docket.”

6. On September 12, 2018, Plaintiffs filed their “Plaintiffs’ Motion for Status Conference.”

7. The Miami-Dade County Bar Association has implemented the “Uniform Civility Standards” from the “Standards of Professional Courtesy and Civility for South Florida.” Those standards specify:

I. Scheduling

2. **Attorneys should communicate with opposing counsel prior to scheduling depositions, hearings and other proceedings, so as to schedule them at times that are mutually convenient for all interested persons. Further, sufficient time should be reserved to permit a complete presentation by counsel for all parties.** Upon receiving an inquiry concerning a proposed time for a hearing, deposition, meeting or other proceeding, a lawyer should promptly agree to the proposal or offer a counter suggestion that is as close in time as is reasonably available, and attorneys should cooperate with each other when conflicts and calendar changes are reasonably necessary. **Only after making a reasonable effort to confer with opposing counsel should attorneys unilaterally schedule depositions, hearings or other matters.**

(Emphasis added)

8. Plaintiffs, and their lawyer, ignored these standards completely.

9. Plaintiffs, and their lawyer, have never contacted SafePoint to attempt to coordinate any of the above referenced motions for hearing.

10. Instead, on September 12, 2018, Plaintiffs, and their lawyer, unilaterally set the motions for hearing on October 10, 2018. (Copy of notice attached as **Exhibit “A”**)

11. And, on September 21, 2018, Plaintiffs, and their lawyer, amended their Notice to include the third motion, again unilaterally. (Copy of amended notice attached as **Exhibit “B”**)

12. In addition to the glaring unprofessionalism and discourtesy of Plaintiffs' lawyer's behavior, and the undeniable violations of the "Standards of Professional Courtesy and Civility for South Florida," the unilaterally set hearing is problematic in many other ways.

13. First, the Uniform Motion Calendar is for uncontested and/or administrative matters. It is not for complex and disputed issues going to the very core of the case. "Plaintiff's [sic] Motion for Protective Order as to the Deposition of Multiple Corporate Representatives of Florida Public Adjusting" will require a special hearing to properly present the issues for consideration. The issues raised are far from simple. Given the allegations leveled in the motion, Plaintiffs' motion should receive careful consideration and not be decided on the Uniform Motion Calendar.

14. Secondly, "Plaintiffs' Motion to Advance Trial Docket" also will require a special hearing to properly present the issues. The motion raises several concerns.¹ Plaintiffs' motion likewise should not be decided on the Uniform Motion Calendar.

15. Thirdly, the undersigned counsel is not available on the date of the unilaterally scheduled hearing, October 10, 2018. The undersigned counsel will be in depositions, all day, in another part of the State of Florida. Plaintiff's lawyer is no novice. She knows exactly what she is doing. Plaintiffs' lawyer knows that SafePoint's attorney would have to travel from Tampa, Florida, a drive of at least 9 hours both ways, to attend any hearing. A telephonic appearance is not an option, because, such would place SafePoint at an extreme disadvantage.

16. For all the reasons above, SafePoint respectfully requests that the unilaterally set October 10, 2018, hearing be cancelled by the Court.

¹ The exact concerns are addressed in SafePoint's "Response to 'Plaintiffs' Motion to Advance Trial on Docket.'"

17. SafePoint, and also its policyholders, have been forced to expend significant time and resources, unnecessarily, to address the inappropriate conduct of Plaintiffs, and their lawyer. Therefore, SafePoint further respectfully requests that Plaintiffs and/or their lawyer be made to reimburse it for the expenses incurred relating to the issues raised by this motion.

WHEREFORE, SafePoint respectfully requests the above relief, and, all such other relief deemed appropriate.

BUTLER WEIHMULLER KATZ CRAIG LLP



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Counsel for Defendant

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to:

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litigation@tarichlaw.com

By E-Portal and E-Mail on October 8, 2018



CURT ALLEN, ESQUIRE

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

FERNANDO PRACA, an individual and
GABRIELA PRACA, an individual,

Plaintiffs,

v.

CASE: 2018-013490-CA-01

SAFEPOINT INSURANCE COMPANY, a Florida For-
Profit Corporation.

Defendant.

NOTICE OF HEARING

PLEASE BE ADVISED that the undersigned will bring on to be heard the following:

Motion: **Plaintiffs' Motion to Advance Trial on Docket and Plaintiffs' Motion for Status Conference**
Date: **Wednesday, October 10th, 2018 at 9:00AM**
Judge: **The Honorable Judge Rodney Smith**
Place: **Miami Dade County Courthouse, 73 West Flagler Street, DCC 1304, Miami, FL 33130**

In accordance with the Americans with Disabilities Act of 1990, persons needing a special accommodation to participate in this proceeding should contact the following no later than seven (7) days prior to the proceedings for assistance:

- (a) IN COURT PROCEEDINGS – Court ADA Coordinator (305-831-7779); if hearing impaired [Court TDD] [(954) 577-4101];
- (b) OUT OF COURT PROCEEDINGS - [Manny M. Tarich] (305-503-5097); if hearing impaired [Fla. Relay Service TDD] (800-955-8771).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing was served via emailed to all parties on the E-Portal list this 12 day of September 2018.

THE TARICH LAW FIRM P.A.
1946 Tyler Street
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Primary: Manny@TarichLaw.com
Secondary: Litigation@TarichLaw.com
Alternative: Kevin@TarichLaw.com

By: /s/ Manny M. Tarich
Manny M. Tarich, Esq.
Florida Bar No. 654876



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

FERNANDO PRACA, an individual and
GABRIELA PRACA, an individual,

Plaintiffs,

v.

CASE: 2018-013490-CA-01

SAFEPOINT INSURANCE COMPANY, a Florida For-
Profit Corporation.

Defendant.

AMENDED NOTICE OF HEARING

(Add-On)

PLEASE BE ADVISED that the undersigned will bring on to be heard the following:

Motion: **Plaintiffs' Motion to Advance Trial on Docket and Plaintiffs' Motion for Status Conference and Plaintiffs' Motion for Protective Order.**
Date: **Wednesday, October 10th, 2018 at 9:00AM**
Judge: **The Honorable Judge Rodney Smith**
Place: **Miami Dade County Courthouse, 73 West Flagler Street, DCC 1304, Miami, FL 33130**

In accordance with the Americans with Disabilities Act of 1990, persons needing a special accommodation to participate in this proceeding should contact the following no later than seven (7) days prior to the proceedings for assistance:

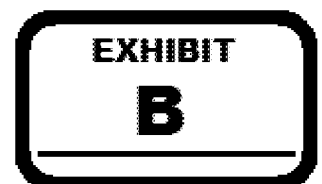
- (a) IN COURT PROCEEDINGS – Court ADA Coordinator (305-831-7779); if hearing impaired [Court TDD] [(305) 577-4101];
- (b) OUT OF COURT PROCEEDINGS - [Manny M. Tarich] (305-503-5097); if hearing impaired [Fla. Relay Service TDD] (800-955-8771).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing was served via emailed to all parties on the E-Portal list this 21 day of September 2018.

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Secondary: Litigation@TarichLaw.com
Alternative: Kevin@TarichLaw.com

By: /s/ Manny M. Tarich
Manny M. Tarich, Esq.
Florida Bar No. 654876



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

CIRCUIT CIVIL DIVISION

FERNANDO PRACA and
GABRIELA PRACA,

Plaintiffs,

vs.

SAFEPOINT INSURANCE COMPANY,

CASE NO: 2018-013490-CA-01

Defendant.

_____ /

MOTION FOR JUDICIAL DISQUALIFICATION

Defendant, SafePoint Insurance Company (“SafePoint”), in accordance with, and pursuant to, Florida Rule of Judicial Administration 2.330, hereby respectfully requests that the Court timely enter an order of disqualification, and it proceed no further.¹

I. Introduction

On October 10, 2018, the Court engaged in *ex-parte* communications with Plaintiffs’ lawyer about the subject matter of the litigation without the consent of SafePoint. For that reason alone, disqualification now is mandated as a matter of law.

¹ On August 9, 2018, SafePoint served a “Notice of Unavailability.” The notice advises that SafePoint’s counsel is unavailable from October 17, 2018, through October 31, 2018. However, the date of the deadline to file this motion falls within the period of the “Notice of Unavailability.” Thus, SafePoint is filing its “Motion for Judicial Disqualification” during the period. In no way should this be taken as a waiver of the “Notice of Unavailability.”

II. Standard of Review

Florida Rule of Judicial Administration 2.330(f) specifies:

(f) Determination – Initial Motion. The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If the motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion.

(Emphasis in original) Further, the law is well-established, and has been for decades, that an allegation of *ex-parte* communication is legally sufficient, in and of itself, to require immediate judicial disqualification. See, e.g, *Robbins v. Robbins*, 742 So. 2d 395 (Fla. 2d DCA 1999); *Pearson v. Pearson*, 870 So. 2d 248 (Fla. 2d DCA 2004); and *Brake v. Murphy*, 693 So. 2d 663 (Fla. 3d DCA 1997).

Accordingly, the Court must immediately enter an order of disqualification, and it can proceed no further.

III. Relevant Happenings

The Miami-Dade County Bar Association has implemented the “Uniform Civility Standards” from the “Standards of Professional Courtesy and Civility for South Florida.” Those standards specify:

I. Scheduling

2. Attorneys should communicate with opposing counsel prior to scheduling depositions, hearings and other proceedings, so as to schedule them at times that are mutually convenient for all interested persons. Further, sufficient time should be reserved to permit a complete presentation by counsel for all parties. Upon receiving an inquiry concerning a proposed time for a hearing, deposition, meeting or other proceeding, a lawyer should promptly agree to the proposal or offer a counter suggestion that is as close in time as is reasonably available, and attorneys should cooperate with each other when conflicts and calendar changes are

reasonably necessary. **Only after making a reasonable effort to confer with opposing counsel should attorneys unilaterally schedule depositions, hearings or other matters.**

(Emphasis added)

On Monday, September 12, 2018, Plaintiffs' lawyer unilaterally set a hearing on "Plaintiffs' Motion to Advance Trial on Docket;" and, "Plaintiffs' Motion for Status Conference" for October 10, 2018. On September 21, 2018, Plaintiffs' lawyer unilaterally set a hearing on "Plaintiffs' Motion for Protective Order," also for October 10, 2018. In direct and blatant violation of the "Uniform Civility Standards" from the "Standards of Professional Courtesy and Civility for South Florida," Plaintiffs' lawyer made no attempt, whatsoever, to coordinate the hearing. He just set it.

So, on October 8, 2018, SafePoint filed a "Motion for Protective Order and Request for Consideration of the Imposition of Sanctions." The motion set forth the aforementioned events and asked for the entry of an Order protecting SafePoint from the improper, unilaterally set hearing.

On October 10, 2018, SafePoint's attorneys honored their previous commitments. They did not fathom that Plaintiffs' lawyer would actually proceed with the hearing, given the well-established law, as well as the Rules of Judicial Administration, the Code of Judicial Conduct, and, the Rules of Professional Conduct.² SafePoint and its attorneys most

² As previously stated by the Florida Supreme Court:

The Supreme Court of Oregon held in a similar disciplinary proceeding that there was nothing in that state's rules to suggest "a lawyer must be successful in improperly influencing a judge's or official's decision for an ex parte contact to be improper. The impermissible ex parte communication itself constitutes the violation." Likewise, there is nothing in the Rules Regulating the Florida Bar indicating that a judge must have actually been influenced by an attorney's improper conduct for that conduct to constitute a violation under the rules. Therefore, we find that there is competent, substantial evidence in the record to support the referee's conclusion that Von Zamft engaged in conduct prejudicial to the administration of justice and violated rule 4-

certainly did not expect the Court to allow an *ex-parte* hearing to occur.³ As discussed below, that is exactly what transpired.

At the October 10, 2018, hearing, the Court proceeded to discuss the case with Plaintiffs' lawyer *ex-parte*, without SafePoint or its attorneys being present. Moreover, it heard and denied SafePoint's "Motion to Dismiss" *ex-parte*, which was not even scheduled for hearing on October 10, 2018.⁴

After the *ex-parte* discussion, SafePoint learned what had transpired after having obtained the transcript on October 12, 2018, timely files this motion to disqualify.

IV. Bases of Motion

SafePoint is moving for disqualification based on the Court having *ex-parte* communications with Plaintiffs' lawyer, hearing a motion *ex-parte*, and, making a ruling *ex-*

8.4(d).

The Fla. Bar v. Von Zamft, 814 So. 2d 385, 389 (Fla. 2002).

³ As previously stated by the Fourth District Court of Appeal:

We note that an ethical question arises whenever a trial judge communicates *ex parte* to direct one party in the preparation of a proposed order. Here the trial judge did not recite his judgment and findings in open court or by letter with a copy furnished to opposing counsel. He instead communicated only with counsel for appellee, explained his rulings and requested preparation of a proposed final judgment. Such practice may be more convenient, but in our view, *ex parte* communication with one party or their counsel is prohibited by Canon 3A(4) of the Code of Judicial Conduct:

A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceeding.

Smith v. Smith, 558 So. 2d 440, 441 (Fla. 4th DCA 1990).

⁴ To be crystal clear, while SafePoint is disappointed by the Court's ruling, which it believes would have been different if SafePoint had been present at the hearing and allowed to actually argue its positions, this motion is no way based on the unfavorable nature of the ruling. This motion is based exclusively on the *ex-parte* discussions between the Court and Plaintiffs' lawyer.

parte.

For all of these reasons, SafePoint and its attorneys do not believe the Court is fair and impartial, believe the Court is biased against them in favor of Plaintiffs and their lawyer, and, do not believe that it will be afforded justice, for impermissible reasons having nothing to do with the merits of the case.

V. Argument

Little more needs to be said. As was noted above, the law is well-established that a motion for judicial disqualification based on *ex-parte* communications, in and of itself, is legally sufficient, and disqualification is mandated. See, e.g., *Robbins*, 742 So. 2d at 395; *Pearson*, 870 So. 2d at 248; and *Brake*, 693 So. 2d at 663.

Simply put, the motion for disqualification must be granted.

As stated by the Florida Supreme Court - "Prejudice of a judge is a delicate question to raise, but, when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge against whom raised should be prompt to recuse himself. No judge under any circumstances is warranted in sitting in the trial of a cause whose neutrality is shadowed or even questioned." *Dickenson v. Parks*, 104 Fla. 577, 582; 140 So. 459, 462 (Fla. 1932).

"The basic tenet for disqualification is justice must satisfy the appearance of justice. This tenet must be followed even if the record is lacking of any actual bias or prejudice on the judge's part, and even though this stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties." *Kielbania v. Jasberg*, 744 So. 2d 1027, 1028 (Fla. 4th DCA 1997). (Citations omitted)

“[Florida Rule of Judicial Administration] 2.330(f) requires a judge to enter an order granting disqualification if the motion to disqualify is ‘legally sufficient.’ The motion is legally sufficient if it shows the party’s well-grounded fear that the party will not receive a fair trial. It is not a question of what the judge feels, but the feeling in the mind of the party seeking to disqualify and the basis for that feeling. The facts underlying the well-grounded fear must be judged from the perspective of the moving party.” *Aberdeen Property Owners Ass’n, Inc. v. Bristol Lakes Homeowners Ass’n, Inc.*, 8 So. 3d 469, 471 (Fla. 4th DCA 2009). (Citations omitted) “The question of disqualification focuses on those matters from which a litigant may reasonably question a judge’s impartiality rather than the judge’s perception of his ability to act fairly and impartiality.” *Wargo v. Wargo*, 669 So. 2d 1123, 1124 (Fla. 4th DCA 1996). “If a judge’s prejudice is predicated on grounds with a modicum of reason, the judge should promptly recuse.” *Aberdeen Property Owners Ass’n, Inc.*, 8 So. 3d at 472.

There can be no question about the legal sufficiency of the present motion. Hence, respectfully, pursuant to Florida Rule of Judicial Administration 2.330, the Court must enter an order of disqualification and proceed no further. *Ennis v. Ennis*, 855 So. 2d 229 (Fla. 5th DCA 2003); *Shands Teaching Hospital and Clinics, Inc. v. Samuel, et al*, 926 So. 2d 441 (Fla. 1st DCA 2006); *Marshall v. Bookstein*, 789 So. 2d 455 (Fla. 4th DCA 2001); *Kates v. Siedenman*, 881 So. 2d 56 (Fla. 4th DCA 2004); *Royal Caribbean Cruises, LTD v. Doe*, 767 So. 2d 626 (Fla. 3d DCA 2000); *NRD Investments, Inc. v. Velazquez*, 965 So. 2d 304 (Fla. 3d DCA 2007); and, *Irwin v. Marko*, 417 So. 2d 1108 (Fla. 4th DCA 1982).

Importantly, as Florida Rule of Judicial Administration 2.330(f) makes crystal clear, the Court “shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action.”

Hence, the Court cannot dispute the allegations of the motion, add “facts,” clarify any point, or, do anything, at all, to address the allegations. It can only determine if the motion is legally sufficient. And, once again, any motion to disqualify based on the foregoing grounds is, as a matter of law, legally sufficient. See, e.g, *Robbins*, 742 So. 2d at 395; *Pearson*, 870 So. 2d at 248; and *Brake*, 693 So. 2d at 663.

Accordingly, the Court must enter an order of disqualification and proceed no further.

VI. Conclusion

For all of the reasons above, the Court must enter an order of disqualification and proceed no further.

WHEREFORE, SafePoint respectfully requests the above relief, and all such other relief deemed appropriate.

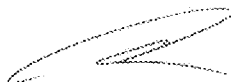
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Counsel for Defendant

CERTIFICATE OF GOOD FAITH

I certify that the foregoing motion, and the statements of Erich Krienes and Brian Hohman both duly authorized representatives of SafePoint, set forth in their affidavits in support of the motion, filed separately but contemporaneously as permitted by Florida Rule of Judicial Administration 2.330(c)(3), are made in good faith, after careful consideration and deliberation.



CURT ALLEN, ESQUIRE

CERTIFICATE OF SERVICE


I certify that a copy hereof has been furnished to:

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by E-Portal and E-Mail; and,

The Honorable Rodney Smith
Circuit Court Judge
Miami-Dade County Courthouse
73 West Flagler Street, Room DCC1304
Miami, Florida 33130

by E-Mail, E-Portal, and, Overnight Mail on October 22, 2018.



CURT ALLEN, ESQUIRE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished, via email through the efilng portal, this 17th day of June, 2019 to Curt Allen and Brian Hohman, of Butler Weihmuller Katz Craig LLP, 400 North Ashley Drive, Suite 2300, Tampa, FL 33602, at:

callen@butler.legal
bhohman@butler.legal
kwhite@butler.legal

and to

The Honorable David C. Miller, Dade County Courthouse, 73 West Flagler Street, Room 525, at Miami, Florida 33130-1731

/s/Gray R. Proctor
Attorney

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

CIRCUIT CIVIL DIVISION

PAUL KLUGERMAN and
BETHANNE KLUGERMAN,

Plaintiffs,

vs.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,

CASE NO: 2018-023492-CA-01

Defendant.

NOTICE OF UNIFORM MOTION CALENDAR HEARING

Thomas J. Morgan, Jr., Esquire
Morgan Law Group, P.A.
55 Merrick Way, Suite 404
Coral Gables, Florida 33134
mlg.eservice@yahoo.com

PLEASE TAKE NOTICE that a hearing will be held before The Honorable David C.
Miller, the Dade County Courthouse, 73 West Flagler Street, Room 525, Miami, Florida
33130, on **June 11, 2019, at 8:00 a.m.**, or as soon thereafter as same may be heard, on:¹

**Avatar Property and Casualty Insurance Company's
"Motion for Relief from Admissions"**

TIME RESERVED: 5 minutes.

The undersigned attorney will be / will not be securing the services of a
court reporter.

PLEASE BE GOVERNED ACCORDINGLY.

BUTLER WEIHMULLER KATZ CRAIG LLP

¹ Pursuant to case authority, this motion is required to be brought before the Court before trial. If this matter is called to trial on June 10, 2019, then it will be heard before trial. Otherwise, the hearing will remain scheduled for June 11, 2019.



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Counsel for Defendant

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the above-named addressee by
E-Mail and E-Portal on June 4, 2019.



CURT ALLEN, ESQUIRE

cc: The Honorable David C. Miller
Orange Legal