

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

CASE No.: _____
L.T. No.: 2012 CA 006844

SYBAC SOLAR, GMBH f/k/a SYBAC SOLAR, AG,
a Foreign Corporation

Petitioner,

v.

6TH STREET SOLAR ENERGY PARK OF GAINESVILLE, LLC

Respondent.

PETITION FOR REVIEW OF AN ORDER FROM THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT IN AND FOR POLK COUNTY, FLORIDA

PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF CONTENTS	ii.....
INTRODUCTION	1.....
BASIS FOR INVOKING JURISDICTION	2.....
STATEMENT OF THE FACTS	3.....
NATURE OF RELIEF SOUGHT	14.....
ARGUMENT AND CITATIONS OF AUTHORITY	14...
CONCLUSION	20.....
CERTIFICATE OF SERVICE	21.....

INTRODUCTION

Florida Rule of Civil Procedure 1.310(b)(6) is the focal point of this Petition. Defendant/Respondent 6th Street filed a counterclaim for defamation against Sybac. The basis for the defamation claim was a series of comments allegedly uttered by a former Sybac agent, Christian Rautenberg, during a meeting in Germany on December 20, 2013. Sybac defended the claim by asserting Mr. Rautenberg was not its agent or employee when he made the alleged statements and that Sybac had no knowledge of the meeting or information regarding what transpired.

6th Street moved to compel Mr. Rautenberg's deposition pursuant to Rule 1.310(b)(6), and unilaterally identified Mr. Rautenberg as the Sybac corporate representative best-suited to speak on the defamation allegations. 6th Street also specifically requested that Mr. Rautenberg's testimony be binding on Sybac. Given Sybac's defenses to the defamation claim, it objected and moved for a protective order. The trial court overruled Sybac's objections, granted 6th Street's motion to compel, ordered Mr. Rautenberg to appear for the deposition as Sybac's Rule 1.310(b)(6) corporate representative, and gave 6th Street specific permission to ask Mr. Rautenberg about the allegations underlying the defamation claim. (A.1192-95).

This Petition challenges the propriety of that order. There is a threshold issue under Rule 1.310(b)(6) regarding the propriety of that notice. More importantly, the real issue is whether a court may compel the deposition of a corporate representative when, based on the plain language of the pleadings and every available piece of evidence before the trial court, the corporation and its former agent have adverse interests in the litigation? The answer to that question is unequivocally no, based on well-settled Florida law. And the unique facts of this case establish that if this Court does not quash the order at issue in this Petition, the harm to Sybac will be irreparable.

BASIS FOR INVOKING JURISDICTION

Article V, section 4(b)(3) of the Florida Constitution authorizes district courts of appeal to issue writs of certiorari. *See also* FLA. R. APP. P. 9.030(b)(2)(A). The trial court rendered the order to be reviewed on May 17, 2016. (A.1192-95). This petition is timely under Florida Rule of Appellate Procedure 9.100(c)(1).

STATEMENT OF THE FACTS

A. A TALE OF TWO CASES

The 6th Street Case: Sybac is a German solar energy development and engineering company. (A.1-2). In 2010, Sybac was seeking opportunities to extend its business into the United States. Sybac ultimately reached a deal with four Floridians, one of whom was Thomas Falz, to develop a solar power plant in Gainesville. (A.4). Mr. Falz and one of his partners formed 6th Street, the sole-purpose entity that would be responsible for carrying out the project. (A.4). Sybac loaned approximately \$6 million to 6th Street as the project developed. (A.5). The relationship ultimately soured and Sybac sued 6th Street in the Polk County Circuit Court to recover its loans (the “6th Street Case”). This Petition challenges an order from the 6th Street Case. As explained below, the order will result in irreparable harm to Sybac if not quashed by this Court.

The Falz Defamation Case: The harm to Sybac resulting from the order in the 6th Street Case cannot be fully appreciated without considering a separate Polk County case. The Falz Defamation Case and the 6th Street case share the same core characters. In the Falz Defamation Case, Mr. Falz

filed a defamation claim against Sybac and its former agent, Christian Rautenberg.

Despite the overlapping cast of characters, the claims and issues in the Falz Defamation Case and the 6th Street were by and large distinct. That changed, however, when Sybac and Mr. Rautenberg received protective orders in the Falz Defamation Case which precluded Mr. Falz from taking their depositions regarding the defamation claims. (A.949). Within two months of entry of the protective order in the Falz Defamation Case, 6th Street filed an amended counterclaim for defamation, based on the same facts underlying the Falz Defamation Case. (A.950).

Because this Court has already disposed of three separate appeals from the Falz Defamation Case, the facts may be familiar to the merits panel reviewing this Petition. Nonetheless, because the harm Sybac will suffer from the 6th Street Case order cannot be understood without a basic understanding of the Falz Defamation Case, the story must begin there.

B. THE FIRST DEFAMATION CLAIM (FALZ V. SYBAC AND RAUTENBERG)

Mr. Falz's Complaint

Mr. Falz alleged in his Complaint that on December 20, 2013, Mr. Rautenberg told Mr. Falz's "employer" that Mr. Falz had stolen money, that

he was a defendant in a Florida lawsuit involving fraud, and that he would receive prison time as a result of his swindling. (A.90-1 at ¶9-12). Mr. Falz sued Mr. Rautenberg in his capacity as an individual. Mr. Falz's claims against Sybac were purely vicarious in nature, as Mr. Rautenberg was allegedly "acting as an agent and/or employee of Sybac" when he defamed Mr. Falz on December 20, 2013 and intentionally interfered with Mr. Falz's relationship with his employer. (A.90-3).

The Complaint specifically identified American Vulkan Corporation as Mr. Falz's employer. (A.90 at ¶7). Mr. Falz alleged that Mr. Rautenberg published his comments to Mr. Falz's employer, and Mr. Falz identified Winter Haven, Florida as American Vulkan Corporation's location. *Id.* According to the Complaint, "the false accusations" were "directed at Falz, individually and in his capacity as President of American Vulkan Corporation." *Id.* Finally, Mr. Falz alleged that by virtue of Mr. Rautenberg's comments during the December 20, 2013 meeting, Mr. Rautenberg and Sybac "intentionally and unjustifiably interfered with the business relationship between Falz and his employer [American Vulkan Corporation]." (A.94 at ¶33; A.95 at ¶38).

In sum, taking the Complaint in the Falz Defamation Case at face value, it appeared Falz's claims had little to do with the 6th Street Case. Rather, Mr. Falz's story, according to the Complaint, was that Mr. Rautenberg published defamatory comments to Mr. Falz's superiors at American Vulkan Corporation in Winter Haven on December 20, 2013, for the purpose of interfering with Mr. Falz's employment relationship with American Vulkan.

A Second Story Emerges

Sybac moved to dismiss Mr. Falz's Complaint on *forum non conveniens* grounds. Mr. Falz's sworn testimony during those proceedings presented a very different version of the purported defamation described in his Complaint. Mr. Falz acknowledged that Mr. Rautenberg, a German resident and citizen, did not publish the purportedly defamatory statements to American Vulkan Corporation in Winter Garden. Rather, Mr. Rautenberg published the statements orally during a meeting on December 20, 2013, in Herne, Germany. (A.101). Mr. Falz knew this because he was actually at the meeting in Herne, along with two Germans named Sebastian and Bernd Hackforth. (A.101). The trial court denied Sybac's motion to dismiss, Sybac appealed, and this Court reversed and remanded¹.

¹ In *Sybac Solar AG, Co. v. Falz*, 174 So. 3d 383 (Fla. 2d DCA 2015), this Court reversed and remanded for further proceedings pursuant to *Kinney*

Sybac Disavows Knowledge or Responsibility for any of the Alleged Acts Committed by Mr. Rautenberg on December 20, 2013

On remand, Sybac answered and filed Affirmative Defenses. Sybac's position was essentially that it knew nothing about Mr. Falz's claims and that Mr. Rautenberg was acting in his capacity as an individual on December 20, 2013, not as a Sybac agent or employee. Sybac averred it did not know of the purported December 20, 2013 meeting before it happened and did not ratify the meeting or any statements Mr. Rautenberg allegedly made at the meeting. (A.106-109). Sybac also maintained that if Mr. Rautenberg committed the acts alleged in Mr. Falz's Complaint, they could not be imputed to Sybac because Mr. Rautenberg was not acting as a Sybac employee. (A.109). Finally, Sybac affirmatively denied any knowledge of a prospective relationship Mr. Falz may have had to American Vulkan Company or any other employer. (A.110).

Mr. Rautenberg and Sybac had separate counsel during the Falz Defamation Proceedings. Mr. Rautenberg ultimately moved to dismiss Mr. Falz's Complaint, arguing he was not subject to Florida *in personam* jurisdiction. The trial court denied Mr. Rautenberg's motion and he appealed. Mr. Rautenberg and Sybac requested a stay of the trial court

System, Inc. v. Continental Insurance Co., 674 So.2d 86, 90 (Fla.1996).

proceedings pending resolution of the appellate proceedings, which was granted on September 8, 2015.

This Court reversed the trial court for a second time. *See Rautenberg v. Falz*, 41 Fla. L. Weekly D665 (Fla. 2d DCA March 11, 2016) (reversing with directions to dismiss Mr. Falz's Complaint without prejudice for failure to adequately allege *in personam* jurisdiction over Mr. Rautenberg); (A.97-105). As of the date this Petition was filed, Mr. Falz has not sought leave to refile or amend his Complaint in the Falz Defamation Case.

C. IN THE 6TH STREET CASE SYBAC FACES YET ANOTHER VERSION OF THE DEFAMATION CLAIM AGAINST SYBAC

Litigation in the Falz Defamation Case did not impede the pace of proceedings in 6th Street Case. On April 14, 2015, 6th Street noticed for deposition duces tecum² a corporate representative from Sybac for questioning on the following topics:

- (1) Knowledge of the relationship between Plaintiff and Defendant;
- (2) Knowledge of the business dealings between Plaintiff and Defendant concerning the 6th Street Project (as defined herein below, Definitions and Instructions, paragraph H, and referenced in the Verified First Amended Complaint);

² The operative Notice is the Third Amended Notice of Taking Deposition. There were two previous Notices of Taking Deposition filed and the parties proceeded with the deposition under the Third Amended version.

(3) Knowledge about any Alleged Loan (as defined herein below, Definitions and Instructions, paragraph E) from Plaintiff to Defendant;

(4) Knowledge of the Alleged Project Agreement (as defined herein below, Definitions and Instructions, paragraph G);

(5) Knowledge of the Alleged Oral Contract (as defined herein below, Definitions and Instructions, paragraph F);

(6) Knowledge of the past and present legal corporate form of Plaintiff including but not limited to all mergers with and/or acquisitions of other corporate entities since January 1, 2009 and any changes to the name or legal corporate form of Plaintiff since January 1, 2009; and

(7) Knowledge of the issues raised in Plaintiff's Verified First Amended Complaint³.

(A.108-113). There is no reference in the deposition notice to anything involving defamation, slander, or the December 20, 2013 meeting at issue in the ongoing Falz Defamation Case.

³ After 6th Street filed its deposition notice, Sybac moved to amend its Complaint. 6th Street objected. As a result, the matter could not be heard until after the scheduled deposition date. (A.135-6). Nevertheless, Sybac wrote counsel for 6th Street to let them know Sybac would prepare its Corporate Representative to testify as to the issues raised in its First Amended Complaint, 6th Street's Answer and Affirmative Defenses, and Sybac's proposed Second Amended Complaint. Counsel for Sybac made clear Sybac would not object to any questioning of its Corporate Representative on these pleadings, or to any effort by 6th Street to amend its deposition notice to include any newly-referenced matters. *Id.*

Sybac produced two representatives, Konstantin Sassen and Laura Tyson, who testified for over two days (June 17-18, 2015) on the topics enumerated in 6th Street's deposition notice. (A.140). After a nearly 2 month delay, 6th Street filed a motion arguing that based on Mr. Sassen's and Ms. Tyson's deposition testimony, Mr. Rautenberg appeared to be the individual with the most knowledge regarding the lawsuit. (A.143). As a result, 6th Street moved the trial court to compel Mr. Rautenberg to appear for deposition in Polk County and to order, *prior to his deposition*, that Mr. Rautenberg's testimony "be binding" on Sybac⁴. (A.145).

In response, Sybac's counsel informed counsel for 6th Street in an email that Sybac already planned to subpoena Mr. Rautenberg for deposition in Polk County as a fact witness in October, and that Mr. Rautenberg's personal counsel had agreed to accept service of the subpoena. (A.148). 6th Street was not appeased, Sybac objected to 6th Street's request for an order

⁴ Perhaps coincidentally, Mr. Rautenberg served his Initial Brief on Mr. Falz and his attorneys in the Falz Defamation Case on July 27, 2015, arguing Florida lacked *in personam* jurisdiction over Mr. Rautenberg in his capacity as an individual. Within a week, 6th Street filed its motion requesting the 6th Street trial court to force Mr. Rautenberg to testify as Sybac's corporate representative and alleging that Sybac's corporate representatives, who were deposed almost two months earlier, testified insufficiently.

designating Mr. Rautenberg as Sybac's corporate representative, and the matter was set for a November 9, 2015 hearing. (A.147-150).

On August 27, 2015, Sybac served a subpoena on Mr. Rautenberg's personal counsel and noticed Mr. Rautenberg for deposition on November 12, 2015 as a fact witness. (A.193-194). A week later, 6th Street cross-noticed Mr. Rautenberg for deposition on the same day and time reserved by Sybac, and asserted 6th Street would be deposing Mr. Rautenberg as Sybac's corporate representative. (A.164-175). Sybac objected, noting, *inter alia*, it had not designated Mr. Rautenberg as a corporate representative (A.189-192) and moved for a Protective Order (A.200-205).

The November 9, 2015 hearing took place three days before Mr. Rautenberg's deposition was set to begin. Counsel for Sybac narrowed the dispute at the hearing's outset, arguing that whether the witnesses would show up was not the issue. (A.219). Rather, it was the capacity in which they would testify that was the issue for Sybac – as corporate representatives or as fact witnesses. The trial court overruled Sybac's objections regarding the form of 6th Street's deposition notices, but specifically left up “for further argument whether [Mr. Rautenberg's] responses can be used as corporate responses.” (A.229). The trial court did, however, order Sybac to prepare

Mr. Rautenberg, Ms. Tyson (for a second time), and Mr. Heuser as Sybac corporate representatives, ready to testify regarding the matters enumerated in 6th Street's deposition notices. (A.231).

Mr. Rautenberg sat for two days of depositions on November 12 and 13. Although 6th Street's cross-notice of Mr. Rautenberg's deposition mentioned nothing about defamation or December 20, 2013 (A.164-175), the attorneys for 6th Street (and Mr. Falz) repeatedly asked questions about the defamation allegations in the Falz Defamation Case (A.628-630), which had been stayed pending appeal. Mr. Rautenberg, upon the advice of his personal counsel, refused to answer any questions regarding the defamation claims in the Falz Defamation Case.

Sybac and Mr. Rautenberg moved for protective orders in the Falz Defamation Case. On October 29, 2015, Judge Radabaugh entered a written order granting the motions, which provided without qualification that Mr. Rautenberg was to be excused from any deposition involving the Falz Defamation Case. (A.949).

6th Street filed its amended counterclaim for defamation less than two months later, based on Mr. Rautenberg's alleged comments at the December 30, 2013 meeting. (A.950). And on February 20, 2016, 6th Street moved to

compel Mr. Rautenberg to sit for deposition yet again, and yet again as Sybac's corporate representative.

Incredibly, 6th Street argued that Mr. Rautenberg should be re-deposed because “[f]urther examination concerning the December 20, 2013 meeting” was critical to its case” and because Mr. Rautenberg refused to answer questions about that meeting during his prior depositions. (A.995-998). Of course, Mr. Rautenberg's deposition notice for the November 12 and 13 depositions mentioned nothing about the December 20 meeting or defamation. And at the time of Mr. Rautenberg's November depositions, 6th Street had not yet filed its amended counterclaim for defamation, so none of those questions had any relevance at his deposition.

Nonetheless, the trial court overruled Sybac's objections, granted 6th Street's motion to compel, ordered Mr. Rautenberg to appear for the deposition as Sybac's Rule 1.310(b)(6) corporate representative yet again, and gave 6th Street specific permission to ask Mr. Rautenberg about the allegations underlying the defamation claim. (A.1192-95).

NATURE OF RELIEF SOUGHT

Sybac seeks an order quashing the trial court's May 17, 2016 order in the 6th Street case. Specifically, Sybac seeks review of the trial court's order

requiring that Sybac prepare Mr. Rautenberg as a corporate representative. More importantly, Sybac requests that this Court quash the portion of the order requiring Mr. Rautenberg to answer any and all questions regarding his statements on December 20, 2013, as they will be imputed to Sybac by operation of Florida Rule of Civil Procedure 1.310(b)6).

ARGUMENT AND CITATIONS OF AUTHORITY

A. Standard for Certiorari Review

To obtain relief via writ of certiorari, a petitioner must establish: (1) a departure from the essential requirements of the law; (2) a consequent material injury for the balance of the trial; and (3) the absence of an adequate remedy on appeal. *Holmes Regional Medical Center, Inc. v. Dumigan*, 151 So. 3d 1282, 1284 (Fla. 5th DCA 2014); *see also Seigler v. Bell*, 148 So. 3d 473, 477 (Fla. 5th DCA 2014) (same); *Allan & Conrad, Inc. v. Univ. of Cent. Fla.*, 961 So. 2d 1083, 1087 (Fla. 5th DCA 2007) (same). The second and third prongs of this test, which collectively require “irreparable harm,” are jurisdictional, and must be satisfied before the first prong may be considered. *Dumigan*, 151 So. 3d at 1284; *Siegler*, 148 So. 3d at 477.

B. The Order on Review Causes Irreparable Harm to Sybac

The general rule is that an order compelling a party to attend a deposition meets the “irreparable harm” prong of the certiorari standard because “once the deposition is taken, it cannot be untaken.” *CVS Caremark Corp. v. Latour*, 109 So. 3d 1232, 1236 (1st DCA 2013) (citing *Dep't of Highway Safety & Motor Vehicles v. Marks*, 898 So. 2d 1063, 1063 n. 1 (Fla. 5th DCA 2005) (noting that an order allowing for the taking of a deposition is one letting the “cat out of the bag” and thus causing irreparable harm if the order departs from the essential requirements of law). On this basis alone, the order compelling Mr. Rautenberg to be deposed as Sybac’s corporate representative meets the “irreparable harm” prong of the certiorari test.

For Sybac, the order compelling Mr. Rautenberg to answer questions about the defamation claim *on Sybac’s behalf* is worse than letting the “cat out of the bag.” From Sybac’s perspective, there is no “cat.” Sybac maintained throughout the litigation in the 6th Street Case and in the Falz Defamation Case that it was unaware of the December 20, 2013 meeting, never ratified any of Mr. Rautenberg’s purported statements, and that Mr. Rautenberg was not an agent of Sybac at the time of the meeting. The order puts the cat *in* the bag, and as a matter of law, makes Sybac responsible for whatever comes out of it.

The obvious problem here is with the defamation claims. Mr. Rautenberg's and Sybac's interests are diametrically opposed when it comes to this testimony. Even in the best case scenario, and assuming Mr. Rautenberg testifies consistent with Sybac's Affirmative Defenses to the defamation claim, there will be an irreconcilable ambiguity between Mr. Rautenberg's testimony as an individual and Mr. Rautenberg's testimony as Sybac's Corporate Representative. Sybac's ability to prove that it did not know of the meeting, did not know what was said at the meeting and did not ratify of the statements made at the meeting will be effectively eviscerated when Mr. Rautenberg, as Sybac's corporate representative, testifies as to the facts of the meeting.

Sybac's ability to keep its interests separate from Mr. Rautenberg's interests is critical to Sybac's affirmative defenses in both the 6th Street Case and Falz Defamation Case. This is why Sybac chose to not designate Mr. Rautenberg as its corporate representative when a corporate representative deposition was first noticed by 6th Street. Sybac has been stripped of the opportunity to meaningfully pursue its affirmative defenses by the Trial Court's Order and this fact justifies this Court's exercise of Certiorari jurisdiction.

Finally, it is worth noting that the the “irreparable harm” flowing from orders allowing “cat out of the bag” information is even greater where the information sought could allow an “unscrupulous litigant to injure another person or party outside the context of the litigation.” *Martin-Johnson, Inc. v. Savage*, 509 So. 2d 1097, 1100 (Fla. 1987) (superseded by statute on other grounds, Fla. Stat. § 768.72 (1989)). *See also Beverly Enterprises-Florida, Inc. v. Ives*, 832 So. 2d 161, 162 (Fla. 5th DCA 2002) (noting that under *Martin-Johnson*, “that irreparable harm such as might be occasioned by an order that would let the ‘cat out of the bag’ and provide the opponent ‘material that could be used by an unscrupulous litigant to injure another person’ was the governing standard for determining whether a petition for writ of certiorari would, in a particular case, be an appropriate vehicle for challenging nonfinal orders granting discovery.”). Based on Mr. Falz’s and 6th Street’s conduct in both cases, as detailed above, this standard should apply in this case.

C. The Circuit Court’s Failure to Correctly Apply Florida Rule of Civil Procedure 1.310(b)(6) Constituted a Departure from the Essential Requirements of Law.

A trial court departs from the essential requirements of law when it fails to apply the “the correct law.” *Fassy v. Crowley*, 884 So. 2d 359, 364

(Fla. 2d DCA 2004) (quoting *Haines City Cmty. Dev. v. Heggs*, 658 So.2d 523, 530 (Fla.1995)). Certiorari review is appropriate if a non-final order fails “to apply the correct law as clearly established.” *Fassy*, 884 So. 2d at 364. And in *Allstate Insurance Co. v. Kaklamanos*, 843 So.2d 885, 890 (Fla. 2003), the Florida Supreme Court held that “clearly established law” can derive from a variety of legal sources, and that “interpretation or application of a statute, a procedural rule, or a constitutional provision may be the basis for granting certiorari review.” (Emphasis Added).

A Florida Rule of Civil Procedure such as Rule 1.310(b)(6) undoubtedly qualifies as “a procedural rule.” That is why “Florida's district courts have a history of affording relief from erroneous deposition-related orders by way of certiorari.” *Florida Highway Patrol v. Bejarano*, 137 So. 3d 619, 621 (Fla. 1st DCA 2014) (citing *CVS Caremark Corp. v. Latour*, 109 So.3d 1232, 1234 (Fla. 1st DCA 2013); *Triple Fish Am., Inc. v. Triple Fish Int'l, L.C.*, 839 So.2d 913, 914 n. 1 (Fla. 5th DCA 2003)).

The order at issue here conflicts with the plain and unambiguous language of Fla. R. Civ. P. 1.310(b)(6), which provides that the corporation “shall designate” the representative that testifies on its behalf. It does not

allow the requesting party to name a specific person to testify on behalf of the corporation, especially one who has adverse interests to the corporation.

When a Rule 1.310(b)(6) deposition is properly noticed and conducted, the testimony of the designee “is deemed to be the testimony of the corporation itself.” *Carriage Hills Condo., Inc. v. JBH Roofing & Constructors, Inc.*, 109 So. 3d 329, 335 (Fla. 4th 2013) (quoting *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212 (E.D.Pa.2008). “**As such, the testimony is binding on the entity.**” *Id.* (Emphasis added).

That is the issue here, and it has come to a head with the defamation counterclaim in the 6th Street Case. 6th Street adduced no evidence whatsoever to contradict Sybac’s defenses regarding Mr. Rautenberg’s authority to act on Sybac’s behalf on December 20, 2013. Sybac subpoenaed Mr. Rautenberg as a fact witness, and 6th Street had two days to take Mr. Rautenberg’s depositions. 6th Street, and 6th Street alone, knows why it waited to press its defamation claim in the 6th Street case, after Mr. Rautenberg had already been deposed. But it did. Sybac should not be bound by Mr. Rautenberg’s testimony, regardless of what it might be, and he should not be redeposed.

CONCLUSION

Sybac respectfully requests this Court exercise its certiorari jurisdiction in this case and quash the trial court's May 17, 2016 order designating Christian Rautenberg as Sybac's corporate representative and ordering him answer questions regarding the defamation claims on behalf of Sybac.

DATED this 16th day of June, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 17, 2016 the following was filed through the Florida e-Portal and a true and correct copy of the foregoing has been furnished via e-mail to: Benjamin W. Hardin, Esquire, and Daniel A. Fox, Esquire [service@hardinpalaw.com], at HARDIN & ASSOCIATES, P.A., P.O. Box 3604, Lakeland, Florida 33802; Alan Bookman, Esquire, [abb@esclaw.com], P. Michael Patterson, Esquire, [pmp@esclaw.com], Cecily M. Welsh, Esquire, [cmw@esclaw.com], at EMMANUEL SHEPPARD & CONDON, 30 South Spring Street, Pensacola, Florida 32502.

/s/ Michael M. Brownlee
Michael M. Brownlee, Esquire