

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

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JUDICIAL OFFICE
DISTRICT COURT OF APPEALS
FIRST DISTRICT

ALLSTATE FLORIDIAN INSURANCE
COMPANY, et al.,

Appellants,
v.

CASE NO.: 1D08-275
L.T. No.: 91774-07

OFFICE OF INSURANCE REGULATION

Appellee.

APPELLEE'S RESPONSE TO MOTION FOR REHEARING AND
REHEARING EN BANC AND ALTERNATIVELY, FOR CERTIFICATION

The Appellee, Office of Insurance Regulation ("OIR"), pursuant to Rule 9.330(a), Florida Rules of Appellate Procedure, files this response in opposition to the Appellants' motion and states as follows:

1. Appellants' motion for rehearing, rehearing en banc, and for certification argues in part, that the panel's April 4, 2008, opinion affirming the OIR's immediate final order conflicts with key decisions of this Court, the Florida Supreme Court, and the U.S. Supreme Court. Appellants reargue matters that have already received the careful attention of the panel. Appellants' motion serves only to further delay the termination of litigation in this matter.

2. It is, of course, well settled that a motion for rehearing may not reargue the merits of a case. *Lawyers Title Insurance Corporation v. Reitzes*, 631 So. 2d 1100 (Fla. 4th DCA 1993).

3. Pursuant to Rule 9.330, Florida Rules of Appellate Procedure, a motion for rehearing shall state with particularity the points of law or fact that, in the opinion of the movant, the court has overlooked or misapprehended in its decision, and shall not present issues not previously raised in the proceeding.

4. Nevertheless, Appellants' motion consists of forty-five pages (45) that primarily restates the case law and facts contained in Appellants' briefs. Interestingly, the Initial Brief of Appellant was only thirty-seven (37) pages. Typically, a motion for rehearing is not lengthier than the initial brief. Nevertheless, the motion does not, as required by 9.330, Florida Rules of Appellate Procedure, reveal any points of law or facts that this Court has overlooked or misapprehended. Further, the cases cited by the Appellants in their motion for rehearing and rehearing en banc do not conflict with the decision in this case.

5. Shortly after the district courts of appeal were established, Judge Wigginton, in *State v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958), *cert. discharged*, 112 So. 2d 571 (Fla. 1959), addressed the function of a motion (then petition) for rehearing:

Certainly it is not the function of a petition for rehearing to furnish a medium through which counsel may advise

the court that they disagree with its conclusion, to reargue matters already discussed in briefs and oral argument and necessarily considered by the court, or to request the court to change its mind as to a matter which has already received the careful attention of the judges, or to further delay the termination of litigation.

See also Whipple v. State of Florida, 431 So. 2d 1011, 1013 (Fla. 2nd DCA 1983).

6. Moreover, Appellants' motion reflects, and the footnotes therein numbered 2, 3, 5, 8, 11, 12, 15, admit, that the issues Appellants discuss at length in their motion for rehearing were previously presented to this Court in either Appellants' Initial Brief and/or Reply Brief.

7. Notwithstanding the foregoing, counsel for the Appellants conclude the motion for rehearing en banc by expressing the belief based on a reasoned and studied professional judgment, that the panel decision in this case is of exceptional importance and asserts that the panel decision is contrary to a list of other decisions of the First District. However, the cases cited on page 46 of the Appellants' motion are neither contrary nor controlling with regard to the decision in this case.

8. It would be of little benefit to the Court for the OIR to reargue cases that have already been argued in the litigants' briefs. None of the cases cited by the Appellants involve regulated entities who were required by statute to make documents freely available as a condition of doing business in the state of Florida or any other state. Furthermore, none of the cases cited by the Appellants in their motion, including those by the First District Court of Appeal, concern the

application of Section 624.318(2), Florida Statutes, thus refuting Appellants' claim of a lack of uniformity.

9. The instant matter, unlike the issues before the courts, including the First District Court of Appeal in the cases cited by Appellants, is an enforcement action for Appellants' failure to comply with the provisions of Section 624.318(2), Florida Statutes, and its requirement that "every person being examined or investigated, and its officers, attorneys, employees, agents, and representatives, shall make freely available...the accounts, records, documents, files, information, assets and matters in their possession..." In light of the provisions of Section 624.11(1), Florida Statutes, that "[n]o person shall transact insurance in this state ... without complying with the applicable provisions of this code," OIR is authorized to bring an enforcement action separate and apart from seeking enforcement of its subpoenas, unlike the cases cited by the Appellants.

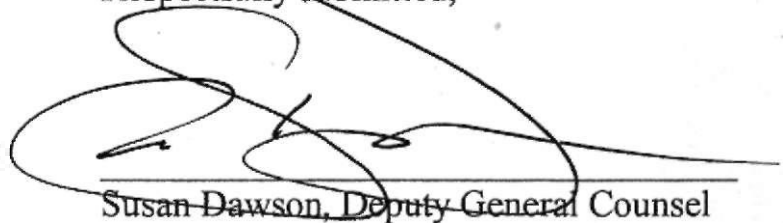
10. Moreover, this Court has already considered cases, which outline the necessary elements of an Immediate Final Order (IFO). The Court applied those elements and standards to the IFO in the instant matter and found that the OIR's IFO meets those requirements.

11. Despite the Appellants' efforts to reframe the issues of this case in order to seek certification to the Florida Supreme Court, the issues herein are not

questions of great public importance and are limited to the facts and statutes applicable to this case.

Wherefore, the Appellee urges this Court to deny the Appellants' Motion for Rehearing and Rehearing En Banc and Alternatively, for Certification.

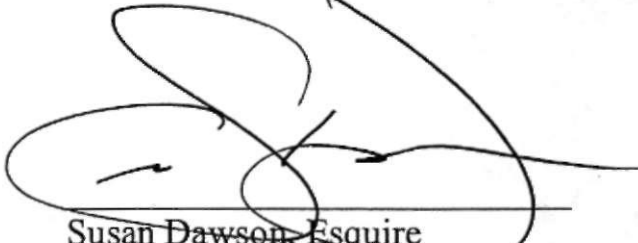
Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Susan Dawson', is written over a horizontal line. The signature is stylized and somewhat cursive.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Response was furnished to Elizabeth McArthur, Esq., Harry O. Thomas, Esq., and David A. Yon, Esq., at Radey, Thomas, Yon and Clark, P.A., 301 S. Bronough Street, Suite 200, Tallahassee, Florida 32301-1722 by **Facsimile and U.S. Mail** this 16th day of April 2008.



Susan Dawson, Esquire