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CLERK OF DISTRICT COURT
FIRST DISTRICT

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

ALLSTATE FLORIDIAN INSURANCE
COMPANY; ALLSTATE INDEMNITY
COMPANY; ALLSTATE PROPERTY &
CASUALTY INSURANCE COMPANY;
ALLSTATE INSURANCE COMPANY;
ALLSTATE FLORIDIAN INDEMNITY
COMPANY; ALLSTATE FIRE AND
CASUALTY INSURANCE COMPANY;
ENCOMPASS INSURANCE COMPANY
OF AMERICA; ENCOMPASS INDEMNITY
COMPANY; ENCOMPASS FLORIDIAN
INSURANCE COMPANY; and ENCOMPASS
FLORIDIAN INDEMNITY COMPANY,

Appellants,

vs.

CASE NO. 1D08-275

OFFICE OF INSURANCE
REGULATION,

Appellee.

**RESPONSE TO OIR'S MOTION FOR CLARIFICATION
AS TO THE EFFECT OF THE COURT'S NON-FINAL OPINION**

The Appellants (collectively referred to as the "Allstate Companies") respond here to the motion filed by Appellee the Office of Insurance Regulation ("OIR"), for clarification of the effect of this Court's non-final opinion issued on April 4, 2008, in the captioned appeal. For the reasons set forth below, there is no ambiguity in the Court's opinion or orders, no clarification is needed, and the

Court's non-final opinion – including the portion lifting the stay – is not effective unless and until it becomes final and the mandate issues.

1. This appeal is an action for judicial review of an Immediate Final Order (“IFO”) issued by OIR on January 17, 2008, that would put into effect an immediate suspension of the Allstate Companies’ certificates of authority (licenses) to write new insurance policies in the state of Florida.

2. On January 17, 2008, the Allstate Companies filed an Emergency Motion for Immediate Relief from Immediate Final Order Suspending Licenses, and on January 18, 2008, a Corrected Emergency Motion was filed with supporting appendix.

3. This Court entered an order on January 18, 2008, granting the Allstate Companies’ Emergency Motion, immediately staying the IFO pending further order of the Court, and providing OIR an opportunity to show cause why the stay should not remain in effect throughout the appeal. (Order, January 18, 2008)

4. OIR filed its response to the show cause order on January 23, 2008, arguing against a stay during the appeal for reasons that were repeated in its answer brief on the merits of this appeal.

5. On January 30, 2008, this Court issued an order providing that “[t]he stay previously imposed by this court shall remain in effect pending a **final**

disposition on the merits of this appeal.” (Order, January 30, 2008, emphasis supplied). This language of the January 30 order is plain and unambiguous.

6. On April 4, 2008, the Court issued an opinion that would affirm the IFO, if the opinion becomes final.

7. OIR has filed a motion for clarification as to whether the Court's stay has been lifted by the April 4, 2008, opinion. The OIR motion for clarification relies on the January 18, 2008, stay order, but overlooks the January 30, 2008, stay order providing that the stay would remain in effect until final disposition on the merits.

8. OIR's motion for clarification points to the last sentence of the Court's April 4 opinion, which concludes as follows: "Because the IFO facially complies with the requirements of Section 120.60(6), Florida Statutes, it is **AFFIRMED** and the stay is lifted." (April 4, 2008, opinion, p. 16)

9. The entirety of the opinion, however, including that last sentence, is subject to the qualifier announced on the first page of the opinion that it is "not final until time expires for rehearing and disposition thereof, if filed." (April 4, 2008, opinion, p. 1) The opinion of the Court clearly shows that the merits of the appeal are intertwined with the question of a stay as recognized by this Court in its January 30, 2008, order. The Allstate Companies are entitled to the opportunity to ask the Court to reconsider its April 4 opinion.

10. Under the plain text of this Court's order and opinion, there has not been a final disposition on the merits of this appeal, hence the stay of January 30, 2008, remains in effect.

11. This result is in keeping with the Florida Rules of Appellate Procedure providing the general rule that stays entered by an appellate court remain in effect until mandate is issued. Philip J. Padovano, *Florida Appellate Practice*, § 23.6, p. 507 and p. 507, n.5, and § 12.1, p. 235 (West's Fla. Practice Series, 2007-08); *Ludwig v. Department of Health*, 778 So. 2d 531, 533-34 (Fla. 1st DCA 2001); *Perez v. Perez*, 769 So. 2d 389, 391, fn. 4 (Fla. 3d DCA 1999) ("This Court has authority to issue a stay ... Once a stay is issued, the stay remains in effect until the appellate court mandate is issued."); Fla. R. App. P. 9.190(e)(4); Fla. R. App. P. 9.310(f).

12. From the foregoing, it seems undeniable that the last phrase in the Court's non-final opinion is as equally non-final as the rest of the opinion. Thus, under the clear language of the January 30 order and April 4 opinion, the stay is not lifted until the April 4 opinion becomes final and the mandate issues.

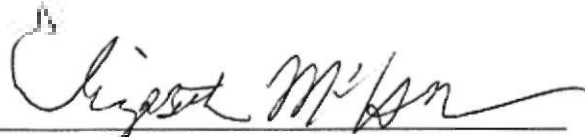
13. OIR's motion for clarification is based only on the text of the Court's January 18 order and the April 4 opinion; OIR does not argue that current circumstances or new information since the imposition of the stay justify reconsideration of the January 30 stay order. *See* Fla. R. App. P. 9.190(e)(2)(d).

Instead, the current circumstances, if presented, would strongly support continuing the stay through final disposition on the merits as provided in the January 30 order. The Allstate Companies are prepared to demonstrate that they have made substantial effort and progress toward compliance with the OIR subpoenas, and will confirm their clear intention, as expressed to OIR between January and April, 2008, to comply with the subpoenas and continue the production of the requested documents, including a privilege log as requested by the subpoenas. Moreover, as described in the Allstate Companies' January 18, 2008 Emergency Motion and supporting appendix, any suspension of the Allstate Companies' ability to write new business would severely hurt Florida insureds and agents as well as the Allstate Companies. This harm from lifting the stay further demonstrates that the stay should remain in effect at least until after the Allstate Companies are given the opportunity to seek reconsideration and the Court issues a final opinion and mandate.

CONCLUSION

Based on the foregoing, OIR's motion for clarification should be denied. There is no ambiguity in the Court's January 30 order or April 4 non-final opinion, and thus no need to clarify the effect of the Court's non-final opinion on the stay. By its terms and consistent with rules of appellate procedure, the stay remains in effect until final disposition of this matter.

Respectfully submitted,



David A. Yon (Fla. Bar #315052)
Harry O. Thomas (Fla. Bar #195097)
Elizabeth McArthur (Fla. Bar #354491)
Radey, Thomas, Yon & Clark, P.A.
Post Office Box 10967 (32302-2967)
301 S. Bronough Street, Suite 200
Tallahassee, Florida 32301-1722
Telephone: (850) 425-6682
Facsimile: (850) 425-6694

ATTORNEYS FOR APPELLANTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been Hand Delivered to Steven H. Parton, Anoush Arakalian Brangaccio, Jim L. Bennett, and Susan Dawson, Office of Insurance Regulation, 200 East Gaines Street, Suite 612, Tallahassee, Florida 32399-4206, this 8th day of April, 2008.

