

**IN THE FEDERAL DISTRICT COURT IN AND FOR
THE SOUTHERN DISTRICT OF FLORIDA
CASE NO:**

FUSION LOGISTICS, INC., a Florida Corporation, and **BRITTANY GEORGES**, individually, a Florida resident,

Plaintiffs,

v.

OLD REPUBLIC UNION INSURANCE COMPANY, a Pennsylvania Corporation, and **AXIS SURPLUS INSURANCE COMPANY**, an Illinois Corporation.

Defendants.

PLAINTIFFS' COMPLAINT FOR DAMAGES

The Plaintiffs, Fusion Logistics, Inc. (“Fusion”) and Brittany Georges (“Ms. Georges”) sue the defendants, Old Republic Union Insurance Company (“Old Republic”) and Axis Specialty Insurance Company (“Axis”) for damages, and allege:

I. NATURE OF THE ACTION

1. This is an action for damages arising under Florida’s common law of contracts, for Defendants’ violations of Fla. Stat. § 624.155(1)(a) and §624.155(1)(b)(1), for violations of Florida’s Unfair Insurance Trade Practices Act codified at Fla. Stat. §§ 626.951 *et. Seq.*, and related common law causes of action.

2. The plaintiffs allege harms arising out of illegal and bad faith insurance practices orchestrated by Old Republic in concert with its affiliates and agents causing Fusion harm.

3. The plaintiffs separately allege bad faith claims handling against Old Republic and Axis relative to their failure to make some effort to resolve all claims made against Fusion

and Ms. Georges by separate claimants but arising from the same automotive collision.

4. Fusion and Ms. Georges are the named defendants in an action alleging automotive negligence pending in Florida's Eleventh Circuit Court in Miami-Dade County, Florida styled, *Ilyana Symes-Griffin v. Fusion Logistics and Brittany Georges*, Case No: 2021-025041-CA-01 ("Symes-Griffin Claim").

5. Fusion and Ms. Georges are also the named defendants in an action alleging automotive negligence that was pending in Florida's Eleventh Circuit Court in Miami-Dade County, Florida styled, *Sydney Mitchell v. Fusion Logistics, Inc. and Brittany Georges*, Case No: 2020-008115-CA-01 ("Mitchell Claim") (the Mitchell Claim and the Symes-Griffin Claim, collectively, the "Underlying Litigations.").

6. Both of the Underlying Litigations arose from the same automotive collision and were handled by the same insurance panel legal counsel and the same insurance adjusters. The bad faith insurance claims handling alleged in this Complaint arises from the insurers' resolution of the Mitchell Claim without making any effort to contact Ms. Symes-Griffin, her attorneys, or to address or resolve the Symes-Griffin Claim, leaving their insureds totally exposed to an excess judgment and needless additional attorney's fees.

7. The allegations in each of the Underlying Litigations triggered coverage under the Old Republic policy of insurance. Old Republic accepted coverage under its policy of insurance for the Symes-Griffin Claim and also for the Mitchell Claim, conducted an investigation and internally adjusted each claim.

8. Axis' insurance policy follows Old Republic's policy and so the allegations in each of the Underlying Litigations triggered coverage under Axis' policy of insurance. Axis accepted coverage under its policy of insurance for the Symes-Griffin Claim and also for the

Mitchell Claim. Accordingly, insurance coverage under the Axis policy of insurance is not at issue for the automotive negligence alleged in the Underlying Litigations.

II. THE PARTIES AND CO-CONSPIRATORS

A. Parties

8. Fusion Logistics, Inc. is a Florida corporation conducting its shipping and logistics business operations principally in the State of Florida with a corporate nerve center located in Miami-Dade County, Florida. At all relevant times, Fusion Logistics was a named insured on the contracts of insurance issued by Old Republic as its primary insurer, and Axis as its excess insurer.

9. Ms. Brittany Georges is a Florida resident domiciled in Miami-Dade County, Florida, over eighteen years of age, and otherwise *sui juris*.

10. Old Republic is an insurance company and business entity incorporated in the State of Illinois. Old Republic derives its revenues by collecting premium payments from consumers in exchange for providing various insurance coverages. According to Florida's Office of Insurance Regulation, Old Republic's principal place of business is in the state of Illinois at the address of 307 North Michigan Avenue, Chicago, IL 60601.

11. Axis is an insurance company and business entity incorporated in the State of Illinois that derives its revenues by collecting premium payments from consumers in exchange for providing various insurance coverages. According to Florida's Office of Insurance Regulation, Axis is home in the state of Illinois at the address of 111 South Wacker Drive, Suite 3500, Chicago, IL 60606, but maintains its administrative offices and stores records in the State of Georgia at 10000 Avalon Boulevard, Suite 200, Alpharetta, Georgia 30009.

B. Co-Conspirators

12. Alliance is an insurance provider and business entity incorporated in the State of

Pennsylvania that derives its revenues collecting premium payments from consumers in exchange for providing them a legal defense and indemnity. According to Florida's Office of Insurance Regulation, Alliance's principal place of business is located at 380 Sentry Parkway, Blue Bell, Pennsylvania 19422-0754. Alliance is not a party defendant in this litigation but is a co-conspirator of Old Republic in charging and collecting illegal insurance premiums, along with North American Risk Services ("NARS").

13. NARS is Old Republic's express or implied agent and third-party administrator of claims made against the Fusion policy of insurance. NARS received and handled the claims and Underlying Litigations and responded on behalf of Old Republic to Fusion's Civil Remedy Notice. NARS conspired with Old Republic and Alliance to charge Fusion illegal insurance premiums.

III. JURISDICTION AND VENUE

25. Jurisdiction is proper under 28 U.S.C. § 1332 as this Complaint alleges damages in excess of \$75,000.00, excluding attorney's fees, and there is complete diversity among the parties.

26. Venue is appropriate because the facts, circumstances, and events giving rise to this litigation occurred within this District.

IV. THE INSURANCE RELATIONSHIPS

A. The Contracts of Insurance

27. At all times material to the allegations of this Complaint, Fusion was the named insured on a policy of Hired and Non-Owned Automotive commercial insurance underwritten by Old Republic numbered ORABHN000300-02 bearing effective dates July 19, 2019 to July 19, 2020. The Old Republic Policy of insurance is attached as Exhibit A.

28. The Old Republic liability policy provides Fusion, among others, with a \$1,000,000.00 policy limit against bodily injury claims on a per occurrence basis, as well as a

legal defense. Fusion paid Old Republic \$2,560,703.00 in policy premiums and agreed to a \$100,000.00 per occurrence deductible for bodily injury/property claims. *Id.*

29. The events and allegations of the Underlying Litigations occurred during the period of coverage for the Old Republic policy of insurance, Fusion was current on all applicable premium payments, and the policy of Old Republic insurance was in full force and effect at all times material to this Complaint.

30. Fusion is additionally the named insured on an Axis policy of insurance numbered P-001-000170501-01. The Axis policy is excess to, and follows, the Old Republic primary insurance layer, and provides Fusion \$2,000,000.00 of bodily injury and property indemnity protection above and beyond the \$1,000,000.00 provided by the Old Republic policy. Because the Old Republic policy covered the allegations in the Underlying Litigations, so too did the Axis policy of insurance. The Axis policy of insurance is attached as Exhibit B.

31. The events of the underlying litigation occurred during the period of coverage for the Axis policy of insurance, Fusion was current on all applicable premium payments, and the Axis policy of insurance was in full force and effect at all times material to the allegations of this Complaint.

32. As an agent acting within the course and scope of her duties to Fusion and using a covered auto with Fusion's permission, Ms. Georges is also an insured under the terms of the Old Republic and Axis contracts of insurance, entitling her to the same level of benefits as the named insured, Fusion, including a legal defense and indemnity protections up to the limits of each policy on a per occurrence basis.

33. This Complaint does not seek a declaration of insurance coverage because Old Republic and Axis each accepted insurance coverage under their respective agreements in response to the allegations, facts, and circumstances of the Underlying Litigations relative to both Fusion and Ms. Georges.

34. Accordingly, coverage under each of the primary and excess insurance policies has been accepted and any opportunity for either Old Republic or Axis to disclaim insurance coverage (for any other reason than possibly the exhaustion of benefits under their respective policies) has been waived both expressly and impliedly through their acceptance, claims handling, and adjustment of each of the Underlying Claims.

B. Old Republic’s Deductible Reimbursement Agreement and the Conspiracy to Collect Illegal Insurance Premiums

i. Florida Law Prohibits Insurers from Charging Fees for Insurance that are not Included in the Premium on the Face of the Insurance Contract

35. Under a liability insurance policy, insureds like Fusion agree to pay policy premiums in exchange for a legal defense and indemnity. That policy premium includes all of the insurance services provided by the insurance carrier and as specified in the policy of insurance. Insurers are prohibited under Florida law from collecting fees from insureds not specified in the contract of insurance.

36. Florida’s Unfair Insurance Trade Practices Act (“FUITPA”), codified at Fla. Stat. §626.951 *et seq.* commits an entire part of Florida’s Insurance Code to defining prohibited business practices for insurers writing insurance contracts in the State of Florida. FUITPA, at Fla. Stat. § 626.9541(1)(o)(2) defines illegal insurance premiums in relevant part as, “knowingly collecting ... charges [] from a Florida resident in excess of or less than those specified in the policy and as fixed by the insurer.”

37. Fees charged by an insurer that are not specified in the policy are “illegal,” “unfair,” and “deceptive.” *Id.* Old Republic, Alliance, and NARS (collectively, the “Conspirators”) used their superior sophistication in transacting insurance and outsized bargaining power to induce Fusion to pay illegal insurance premiums through an elaborate scheme reduced to writing and executed separate and apart from the contracts of insurance.

38. They named their illegal side-deal the Deductible Reimbursement Agreement (hereinafter, the “DRA”). The DRA attached as Exhibit C.

39. Fusion had already paid the insurance policy premium amounts on the face of the Old Republic and Alliance policies of insurance. Accordingly, any amount assessed to Fusion through the DRA is an illegal insurance premium that is prohibited under Florida law.

40. Old Republic and Alliance combined and conspired with their mutual third-party administrator, NARS, to charge Fusion illegal insurance premiums by tricking Fusion into loaning the Conspirators nearly \$3,000,000.00 in operating capital. The illegal insurance premiums include interest accruing on Fusion’s operating capital, costs of the conspiracy that were shifted to Fusion, and expenses of the Conspiracy that were shifted to Fusion.

41. The conspiracy itself caused significant harm to Fusion by denying Fusion the use of its own money property. These damages will require an accounting and expert financial analysis to fully understand and quantify.

ii. The Conspirators Relied on Their Superior Insurance Knowledge and Outsized Bargaining Power to Lure Fusion Into Paying Illegal Insurance Premiums

42. Old Republic Union Insurance Company is a member of the Old Republic Insurance Group. On its public-facing webpage, the insurer touts “[w]e are one of America's strongest insurers—a company managed conservatively for the long-run. Since the early 1950s, we have offered innovative solutions, proven claims, and risk management solutions for our

customers. Our approach, commitment to the marketplace, and high standards for client care are just a few of the reasons we enjoy an excellent reputation in the insurance industry.”¹

43. Old Republic goes on promoting its A+ financial rating before detailing dozens of its insurance business “specialties.” *Id.* Old Republic is expert in insurance matters and holds itself out to the public as expert in insurance. Old Republic is registered with Florida’s Department of Insurance Regulation, maintains an “active” status as a property and casualty insurer, and has been registered with Florida’s insurance regulator since December 19, 1985.

44. Alliance is a PMA Company, itself a member of the Old Republic Insurance Group, and boasts on its public-facing webpage, “[w]e leverage the depth and breadth of this expertise to help you take a strategic approach to managing your total cost of risk. . . We serve large accounts, mid-sized companies, captives and groups. Our solutions include . . . commercial auto. . . [o]ur integrated services include: underwriting, claims, managed care, risk control and account management. . .”²

45. Alliance has extensive expertise in placing, maintaining, and administering commercial automotive insurance coverages like that issued to Fusion. Alliance is registered with Florida’s Department of Insurance Regulation, maintains an “active” status as a property and casualty insurer, and has been registered with Florida’s insurance regulator since June 14, 2001.

46. NARS is an express or implied agent of Old Republic and Alliance, and acted as the third-party administrator for the Underlying Litigations. NARS touts on its webpage, “[w]e leverage our substantial resources and in-depth experience to successfully manage a broad range

¹ <https://www.oldrepublicinsurancegroup.com/companies/old-republic-insurance-company> (last visited Jan. 23, 2023, 12:15 PM EST).

² <https://www.oldrepublicinsurancegroup.com/companies/pma-companies> (last visited Jan. 23, 2023, 1:16 PM EST).

of claims. Whether handling basic physical damage claims or complex liability cases; our flexible people, processes and technology allow us to dedicate the appropriate team for our client's individual program. We partner with clients to create a well-defined roadmap to the most successful disposition of claims. Many administrators try to handle every type of claim. We do not. Rather than attempting to do so, we match staff specialties to those claims that allow us to produce consistently superior results.”³

47. Each of the Conspirators is an insurance industry expert with decades experience placing and managing policies of commercial automotive liability insurance like the ones that they ultimately placed and administered for Fusion. Each of the Conspirators has availed itself of Florida's insurance laws and is subject to Florida's insurance regulations. Each therefore knew or should have known that charging fees for insurance separate and apart from those listed on the face of the insurance contract violates Florida law.

48. Fusion was at the time it contracted with the Insurers obligated pursuant to various agreements, including an Amazon© vendor servicing agreement, to provide last-mile delivery services across dozens of states on a volume basis. Maintaining liability insurance across the delivery fleet of vehicles was an essential piece of Fusion's strategic business model.

49. The Conspirators identified Fusion's need for liability insurance and that Fusion was a small business without resources to allocate to complex or protracted insurance negotiations. The Conspirators leveraged Fusion's need, lack of resources, and lack of sophistication to drive a hard (but illegal) bargain. Old Republic agreed to place commercial automotive insurance to meet Fusion's needs, but only if Fusion agreed to pay illegal insurance premiums to cover the Insurer's claims administration costs. NARS and Alliance agreed and

³ <https://www.narisk.com/claims-services> (last visited 11/25/2022).

joined in the conspiracy to collect illegal premiums from Fusion, and the Conspirators reduced the deal to writing.

50. The DRA provides, “[Fusion] has requested [Alliance] and [Old Republic] to issue to the Insured certain insurance policies as identified in Schedule A (“Policies”) and [Alliance] and [Old Republic] has [sic] agreed to do so on the terms and conditions set forth below, as well as those in the Policies....” *Id.*

51. Unaware that the Conspirators’ DRA was an illegal insurance premium-generating treadmill, and because it had to have liability insurance in place to protect itself from liability arising from operation of its delivery fleet, Fusion entered the DRA. Fusion capitalized the DRA Fund in the amount of \$2,757,994.00 over the course of four payments dated July 19, 2019; October 19, 2019; January 19, 2020, and April 19, 2020.

52. Before Fusion made these payments, it had already paid the insurance policy premium amounts due and owing on the face of the Old Republic and Alliance policies of insurance. As a result, Fusion had been tricked by the Conspirators into lending them nearly \$3,000,000.00 of its operating capital under the pretext of pledging deductibles, interest, costs, and expenses that were not then due or owing under the contracts of insurance.

53. The Conspirators’ full use and intent in tricking Fusion into lending it future deductible amounts will require discovery. But, at a minimum, the agreement charged to Fusion illegal insurance premiums in the form of interest accruing on Fusion’s capital, the expenses for account analysis conducted by Bank of America at the request of the Conspirators, and the costs associated with banking the pledged future deductibles.

54. The Conspiracy forced Fusion to the brink of insolvency, caused Fusion to incur professional fees and costs that would not have incurred if it had possession and control over its \$3,000,000.00 in operating capital, loss of business, as well as opportunity costs.

iii. The Terms of the Illegal DRA Reflect the Conspirators' Abusive Intent

55. The DRA required Fusion to create a fund ("DRA Fund") for deposit into "a federally insured bank account acceptable to [Alliance and Old Republic]," which fund "shall be used for the reimbursement of loss and, if applicable, loss expense payments within the deductible portion of the Policies from which the Claims Administrator [NARS] is authorized to make withdrawals on behalf of the Insured and deposit into a [Alliance] or [Old Republic] bank account as set forth in Schedule A." *Id.* ¶ 2.

56. By its terms, the DRA awards the Conspirators the right to sweep on a monthly basis any interest accruing on Fusion's cash deposited into the DRA Fund, providing, "[a]ny interest earned on the funds in the Reimbursement Account shall be retained by the Claims Administrator as revenue at the end of each month." *Id.* ¶ 1.

57. The DRA separately works to shift back to Fusion all costs associated with maintaining the DRA Fund, providing, "[a]ny and all banking fees associated with the Reimbursement Account shall be the responsibility of the Insured and shall be paid separately by the Insured." *Id.* ¶ 1. The accruing interest, the banking fee, and banking costs each constitutes additional charges for insurance not included in the premium on the face of the Old Republic policy of insurance and, thus, illegal insurance premiums.

58. At first glance, the name—Deductible Reimbursement Agreement—seems inappropriate. By its terms, the DRA required Fusion to pay speculative future deductibles *in advance* based on the Conspirators' non-disclosed underwriting. Exhibit C ¶ 5. There should

never have been anything to reimburse because the deductibles were advanced and available to be applied on a per-claim basis.

59. But the DRA actually created in favor of the Conspirators an illegal premium generating investment fund over which they exercised absolute discretion to reimburse themselves for deductibles that they paid from *a different financial account*. “[Conspirators] will be the only parties which are authorized, at their discretion, to draw upon the [DRA Fund], which shall be for the amount of any payment made from the Claims Loss Fund Account.” DRA ¶ 3 [emphasis supplied]. The Claims Loss Fund Account is an unknown to Fusion. On information and belief, this is an account within the control of the Conspirators. Fusion has no knowledge of the activity occurring within this account, never had control over this account, and has never received a statement or accounting relating to deductible payments from this account.

60. In practice, the Conspirators kept Fusion’s capital invested in the DRA Fund to maximize their accrued interest gains (one element of the illegal insurance premiums the Conspirators plotted to collect).

61. The Conspirators designed the DRA to accrue as much interest as possible. Where there was doubt the insurers erred in every consideration on the side of having Fusion *overfund* and *unrestrict* the Conspirators’ illegal premium generating investment fund. For example, rather than require advance payment of deductibles for one policy year (the stated albeit dubious purpose for the account), the DRA specifically contemplated a fund that would service several policy years in order to justify demanding from Fusion the largest possible principal investment. “[T]he Insured agrees that the [DRA Fund] will be funded at all times with a balance adequate to cover all current and future Policies [sic] obligations within the deductible layer....” DRA ¶ 5.

62. Because funding in this manner necessarily required combining several policy years, the Conspirators additionally included deceptive language in the DRA authorizing their ability to use the DRA Fund to satisfy deductible reimbursement payments against *past* and *future* insurance policies, without restriction. *Id.*

63. By example, if a deductible was due and owing in connection with a liability claim against Fusion in 2019, under the DRA the Conspirators had the freedom to pay that deductible amount from their own financial account while keeping Fusion's capital invested in the interest-bearing DRA Fund indefinitely. In theory and practice they could wait until 2022 to reimburse themselves, maximize their interest gains while taxing the costs to Fusion.

64. Based on the DRA Fund statements and deductible payment analyses provided by the Conspirators following Civil Remedy Notices and Civil Theft Demand letters tendered by Fusion's outside insurance counsel, that is what they did.

65. The Conspirators punctuated the subjugation of Fusion under the DRA by taking full, total control over Fusion's operating capital deposited into DRA Fund. Fusion had to ask for its money back under the terms of the illegal agreement. Its rights to terminate the agreement were negligible, and the Conspirators had Fusion warrant that it would not encumber their illegal premium fund in any way.

iii. In Operation, the Illegal DRA Pit the Conspirators' Interests in Profiteering from Illegal Insurance Premiums Against their Fiduciary Duties to their Insured as each Conspirator took steps to Advance the Illegal Premium Generating Conspiracy

66. NARS was charged under the DRA with the duty to withdraw deductible payments from the DRA Fund and to apply those deductibles to claims made against three separate policies of insurance underwritten by Alliance and Old Republic. The policies are

identified in reconciliation spreadsheets as 89, 95, and 02 to coordinate with the last two digits of the respective policy numbers.

67. Old Republic, through its administrator NARS, provided to Fusion monthly accounting and reconciliations on policies 89 and 95 showing deductible withdrawals made from the DRA Fund consistent with claims and expected coordinating claims handling activity.

68. But Old Republic provided no reporting, accounting, or reconciliation relating to claims against the 02 policy from July 2019 through April 2021. In fact, Old Republic only provided reconciliation of the 02 policy following the tender of a Civil Remedy Notice and demand letter by Fusion's outside insurance counsel.

69. When Old Republic did finally account for its management of the DRA Fund relative to Policy 02, its malfeasance and the Conspirators' plan to generate and collect illegal insurance premiums by managing the DRA Fund as their own investment account came sharply into focus.

70. NARS' May 2021 reconciliation for claims against policy 02 reveal a withdrawal in the amount of \$454,889.62 to "close" thirty-three claims on a single day in 2021. Some of those 33 claims had been "open" since 2019. But the claims "open" status was on information and belief a fiction. The claims were only "open" in the set of books accounting for the conspiratorial DRA Fund. On information and belief, the deductible payments relative to these claims had been made from the Claim Loss account long before as the claims were addressed in real time, and the statements, accounting, and reconciliations from that account has not been provided to Fusion.

71. The DRA created a conflict of interest in each of the Conspirators—each bound by fiduciary duties to Fusion—enticing each Conspirator to delay claims handling, slow-pay

claims, and to otherwise double-deal with the insured. The longer in time Fusion's capital remained in the interest-bearing DRA Fund, the larger the illegal premiums grew. Similarly, the larger the capital balance of Fusion's cash property, the faster the Conspirators' illegal premiums accumulated.

72. Rather than viewing Fusion as a contractual fiduciary to be protected from risk so long as it paid its premiums, the Conspirators viewed Fusion as a profit-center that must be swindled in order to generate ever greater passive income for their benefit. The Conspirators through their conspiracy expressly incited themselves to an inversion of their legal duties to Fusion.

73. The Conspirators, each of them, succumbed to the corrupting incentives created by their illegal premium reinvestment scheme at a minimum by actively concealing their double-dealing from Fusion. In their pursuit of maximizing the generation of illegal insurance premiums, the Conspirators maximized the principal balance in the DRA account and also maximized the period of time that the maximum principal balance remained within the DRA Fund. The Conspirators, and each of them, concealed the accounting showing that no deductibles were being withdrawn from the DRA Fund against policy 02 in order to optimize their profiteering scheme.

74. The Conspirators actions are revealing of their intent, modifying their performance to drive ever-greater illegal premium generation beyond what is contemplated by the terms of the illegal DRA. The DRA specifies that “[a]ny interest earned on the funds in the Reimbursement Account shall be retained by the Claims Administrator as revenue at the end of each month.” Exhibit C ¶ 1 [emphasis supplied]. But in practice, the Conspirators did not exercise their rights to sweep the account monthly and hand the money to their administrator and

co-conspirator, NARS. Rather, they reinvested for years the interest accruing on Fusion's cash principal in order to maximize their illegal premium gains.

75. The Conspirators' misappropriation of Fusion's property for the production of illegal insurance premiums is fraudulent and constitutes a clear breach of the trust and confidence that Fusion vested with them as experts in managing liability insurance and claims handling matters.

76. Old Republic and Alliance knew that deductibles either weren't being paid or that they weren't being reimbursed for the deductibles already advanced from the *other*, Claims Loss Fund Account. Accordingly, each of the conspirators in addition to crafting and executing the DRA itself, advanced the scheme to generate and collect illegal insurance premiums from their mutual insured.

77. NARS oversaw the DRA Fund for Old Republic and there can be no question that it was aware that no deductibles were being withdrawn from the account.

78. The Conspirators each knew that the illegal premiums were reinvested monthly in order to drive the principal balance of the DRA Fund ever higher, accelerating the generation of illegal insurance premiums.

v. *Fusion Discovered the Conspiracy While Investigating its Insurer's Bad Faith Claims Handling, then Tendered Demands and Civil Remedy Notices for the Immediate Return of its Funds, and the Conspirators Ultimately try Quietly to Walk Away from their Scheme*

79. The conspiracy to generate and collect from Fusion illegal insurance premiums likely would never have been discovered if not for the bad faith claims handling of Old Republic and Axis, dumping their policy limits to escape further defense costs and leaving Fusion and Ms. Georges exposed to the Symes-Griffin excess verdict.

80. In August 2020, both the Mitchell Claim and the Symes-Griffin Claim had already been tendered and—even assuming that the DRA was not a conspiratorial illegal insurance premium scheme—the DRA Fund was significantly overfunded by what Fusion believed was \$1,200,000.00. In other words, there appeared to be far more money in the DRA Fund than would be needed to pay future deductibles.

81. The exact amount of DRA Fund surplus is unclear because of the Conspirators' sham accounting for and concealment from Fusion of policy 02 activity. Fusion followed up routinely itself and through its representatives while teetering on the edge of bankruptcy. But the Conspirators—perhaps knowing that the account only *appeared* overfunded due to their illegal premium scheme and sham accounting coverup—refused return of Fusion's money.

82. The Conspirators advised Fusion that under paragraph 6 of the DRA, “[o]nce [Old Republic] or [Alliance] determines in its reasonable discretion that no reimbursements for deductibles are due to [Alliance] or [Old Republic], [NARS] is authorized to release to the Insured all funds remaining in the [DRA Fund] the later of twenty-four (24) months after the most recent policy expiration or ninety (90) days after all claims under the Policies have been closed.” DRA ¶ 6.

83. During this period, the global Covid-19 pandemic harmed Fusion's business, revenues were down, and Fusion was decreasing the scope of its operations. While Fusion was undergoing this cash-flow crisis, and fighting to ensure that its liability insurers performed as promised under their contracts of insurance relative to the troubling Symes-Griffin and Mitchell Claims, the same Conspirators were profiteering from the DRA which tied-up needlessly in excess of one million dollars of Fusion's operating capital.

84. By September of 2020, Fusion and Ms. Georges were facing competing policy limit demands from the Mitchell Claim and the Symes-Griffin Claim and Fusion knew that any excess verdict posed an existential threat to the company. The company hired outside insurance counsel to consult relative to the Underlying Litigations.

85. Fusion only discovered the full scope of impropriety of the DRA and the conspiracy to seize its operating funds for the Conspirators gain *after* the Mitchell Claim was rushed recklessly into settlement. Up to that point in time, Fusion was embattled with the carriers seeking the return only of the *surplus* deductibles seized in the DRA Fund.

86. But the entire arrangement was improper and Fusion was entitled under the law to the return of every penny in the DRA Fund. It had been tricked by its fiduciaries into pledging advanced deductibles as security for claims that had not yet been made. The entire scheme was improper and illegal.

87. On September 21, 2021, Fusion filed its Civil Remedy Notices alerting Old Republic to its unfair, illegal premium dealings through the DRA. NARS, filing a response on behalf of Old Republic, and without any further explanation flatly denied any bad faith insurance practices but did take an opportunity to misrepresent that Old Republic was defending Fusion at the time of the response (Old Republic had already denied Fusion its defense and was not defending Fusion at the time this representation was made to Florida's Department of Insurance Regulation).

88. Following Fusion's notice of the illegal premium scheme to Florida's Department of Insurance Regulation, on December 7, 2021 the Conspirators released back to Fusion \$750,000.00 from the DRA Fund. The Conspirators withheld some funds and under the

pretext of performing under the DRA explaining to Fusion that it was releasing surplus deductibles.

89. On December 28, 2021, Fusion tendered written demand directly on NARS seeking the return of its misappropriated funds. Fusion advised NARS through that correspondence that it considered the DRA a sham agreement to collect illegal insurance premiums, and that NARS' was part of conspiracy to defraud Fusion.

90. In response, the Conspirators through NARS threatened Fusion with sanctions and attorney's fees if Fusion sought to enforce its rights in a court of competent jurisdiction.

91. But on August 18, 2022, and while claims were still pending and long before the DRA contractual period authorizing the release of DRA Funds back to Fusion had run, the Conspirators abandoned their efforts to enforce the terms of the DRA, and emptied the DRA Fund back to Fusion in the amount of \$512,464.30.

92. In addition to relinquishing back to Fusion the balance the balance of the DRA Fund (prematurely if the DRA is viewed as a valid agreement) the Conspirators forfeited their contractual "right" to the accrued interest held in that account.

93. Because the accounting for the DRA was deeply flawed and deceptive, Fusion does not know what amounts were returned and those withheld by the Conspirators. It is certain that the Conspirators did not return Fusion's out-of-pocket costs and expenses of the conspiracy taxed to Fusion under the terms of the DRA.

94. The Conspirators by their apparent return of some or all of the accrued interest in the DRA Fund—despite express provision granting in the DRA granting the Conspirators ownership of that interest-- implicitly concede the illegality and impropriety of their actions.

95. Fusion was never provided a full reconciliations revealing the total value of illegal premiums in the form of bank fees, costs, and accrued interest the Conspirators actually collected, or caused Fusion to pay. The total harm caused to Fusion by the illegal insurance premium conspiracy is unknown at this time, very complex, and will require and accounting and expert financial analysis to fully assess.

96. The above predatory and illegal dealings reveal the nature of Old Republic's business relationship with Fusion and Ms. Georges at the time that the claims giving rise to the instant litigation were tendered and handled. Fusion and Ms. Georges were in the midst of an ongoing conspiracy—perpetrated by their own liability carriers in concert with the third-party administrator—designed to misappropriate through illegal agreement Fusion's property for their own financial gain.

V. THE BAD FAITH CLAIMS HANDLING OF OLD REPUBLIC AND AXIS

97. On July 26, 2019, Brittany Georges was traveling northbound on Northwest 27th Avenue in Miami and attempted a left turn into a shopping center. She was stopped before she cleared the intersection by the car in front of her and struck by Ilyana Symes-Griffin who was traveling southbound on Northwest 27th Avenue. Ms. Symes-Griffin suffered personal injury in the incident and her vehicle was a total loss. The impact of the collision was sufficient to spin the Fusion vehicle into a pedestrian, Sydney Mitchell, causing him personal injury.

98. Old Republic began its investigation of the accident through its agent, and third party administrator, NARS. On August 21, 2019, NARS was provided a claim from Progressive Auto Insurance. NARS assigned Brandon Spilling to handle the bodily injury claim, and Lara Khan to handle the property damage claim. Sara McCloskey of NARS sent an initial evaluation to Old Republic of the claim and setting reserves.

99. On October 29, 2019, NARS informed Fusion that an excess verdict is likely on the facts of the case. Old Republic put Axis on notice of the likelihood of an excess verdict no later than October 29, 2019.

100. On December 5, 2019, Ms. Symes-Griffin tendered a policy limit demand. On December 18, 2019 insurance defense counsel advised Old Republic that Ms. Symes-Griffin incurred \$58,382.00 in medical bills. That correspondence concluded with an invitation to discuss resolution strategy of the Symes-Griffin Claim with Old Republic.

101. By December 30, 2019 email correspondence, Old Republic advised Fusion that it would be responding to Ms. Symes-Griffin's claim and demand. It further advised that the total reserve set for the Underlying Litigations was set near policy limits.

102. Ms. Symes-Griffin had tendered a policy limits demand, and Old Republic and Axis were aware of the potential for an excess verdict before Mr. Mitchell tendered his claim.

103. On January 31, 2020, Mr. Mitchell tendered his policy limit demand. Soon after, Mitchell filed a complaint naming Fusion and Ms. Georges as defendants in Florida circuit civil court. Mr. Mitchell began conducting discovery.

104. On December 20, 2019, NARS summarized Ms. Symes-Griffin's claim assessing her property damage, medical bills, and reports. By February 5, 2020, Old Republic had assigned a value for the resolution of Ms. Symes-Griffin's Claim. On January 5, 2020, Old Republic advised Axis that Fusion was on notice of both the Mitchell and Symes-Griffin demands, and that Old Republic set its policy limits of \$1,000,000, as reserves.

105. On March 19, 2020, a conference call was conducted among Old Republic and Axis to determine a settlement strategy for resolving the Mitchell Claim. The carriers

determined an appropriate initial offer to resolve the Mitchell Claim. There was no discussion or strategy for addressing Ms. Symes-Griffin's property claim or bodily injury claim. Axis outside counsel Duane Cochenour at the conclusion of the call instructed defense counsel that no offer was to be made before he could consult with Axis.

106. No later than March 2020, Axis and Old Republic were jointly controlling Fusion's and Ms. Georges' defense.

107. On April 10, 2020, defense counsel tendered an offer of \$250,000.00 to resolve the Mitchell Claim. Bob Keough, Old Republic Vice President of claims stated that the carrier maintained a reserve for the Symes-Griffin Claim and that he would seek authority from his superiors to increase the amount reserved.

108. Ms. Symes-Griffing was not contacted. Counsel for Ms. Symes-Griffin was never contacted. No offer to resolve the Symes-Griffin Claim was made.

109. On May 13, 2020, counsel for Mitchell proposed that Old Republic tender its policy to Axis (Fusion's excess liability insurer). In exchange, according to the proposal, Mitchell's counsel would agree to negotiate resolution of his claim in brackets between 1 million and 2.5 million dollars (within Fusion's \$3,000,000 policy limits). Mr. Mitchell's proposal accordingly left \$500,000.00 in indemnity dollars for Fusion to resolve Ms. Symes-Griffin's Claim. Old Republic did not accept Mitchell's proposal.

110. Ms. Georges was never informed of this settlement offer, she was not informed of her rights or exposures in light of the settlement offer, and Ms. Georges was never provided any guidance on the potential consequences of rejecting Mitchell's settlement offer. In fact there was no claims handling communication with Ms. Georges in any form.

111. Although on May 21, 2020, Fusion's insurance defense counsel proposed a strategy for handling the Symes-Griffin Claim in light of Mr. Mitchell's demand, no offer was tendered to Ms. Symes-Griffin. In fact, Ms. Symes-Griffin was never contacted or included in settlement discussions.

112. On or about September 3, 2020, Ms. Georges was deposed by counsel for Mitchell. Following that deposition, Mitchell reinstated his policy limit demand of \$3,000,000.00. On or about September 3, 2020, Old Republic tendered its policy to Axis.

113. At the time that Old Republic tendered its policy and consequently officially relinquished control of Fusion's and Ms. George's defense to Axis, no one had contacted Ms. Georges by telephone, facsimile, letter, or any other means to explain her rights, her legal exposures, or the status of her legal defense and indemnity against the claims pending against her. She was completely blind and was ignored by Old Republic from the time that each claim was made through Old Republic's tender to Axis.

114. Further, following 10 months of claims handling by Old Republic, no one contacted Ms. Symes-Griffin, no one contacted Ms. Symes-Griffin's counsel regarding resolution, no offer was made to Ms. Symes-Griffin for her injuries, no payment was made to resolve her property damage claim on her total loss vehicle, and no global resolution proposal was tendered by Old Republic or Axis to the various claimants/plaintiffs.

115. Following Old Republic's tender, Axis quickly realized that it was going to incur significant defense fee costs in addition to its policy limits if it performed its contract of insurance in good faith. In order to avoid a business loss, Axis immediately made the business decision to abandon Fusion's defense by paying Mitchell's policy limit demand.

116. Axis did not even know at the time that this decision was made if other claimants claims were resolved, partially resolved, or still live. It conducted no investigation of the facts and circumstances surrounding the Underlying Litigations. Axis did not perform long enough to realize that the Symes-Griffin Claim had not been addressed in any meaningful way.

117. Even though Ms. Symes-Griffin's Claim and demand was made prior to the Mitchell Claim, neither Axis nor Old Republic ever contacted Ms. Symes-Griffin to invite or advance resolution discussions, neither insurer tendered Ms. Symes-Griffin an offer, nor attempted to negotiate on a trilateral basis with Mr. Mitchell and Ms. Symes-Griffin.

118. Rather, Axis and Old Republic left the Symes-Griffin injury and property claims unaddressed and unresolved, leaving their mutual insureds to pay out-of-pocket defense costs, strategize their own defense, and face needless uninsured, excess judgments.

119. Indeed, neither carrier satisfied the lowest possible standard of good faith in informing Ms. Georges of anything they were doing to protect her interests. Ms. Georges was unaware that the Mitchell Claim was going to be settled, that it would be settled by exhausting all available insurance, and that she would individually remain liable for whatever damages arose from the unresolved Symes-Griffin Claim. Each carrier failed in their good faith duty to communicate and keep their insured informed.

120. Fusion objected to and opposed the Axis settlement strategy arguing that the proposed actions-- rather than possibly avoiding an excess judgment by attempting to resolve all claims against Fusion--guaranteed that Fusion would be exposed to an excess verdict from the Symes-Griffin Claim. Fusion's defense counsel advised all insurers that he believed all of the claims could be resolved within the policy limits. Axis rejected the position of its insured, as

well as the advice of defense counsel and instead pursued its own strategy dumping its policy limits to avoid defending its insureds.

121. Axis could not be dissuaded because it had already made a business decision to exit the defense as quickly as possible, and it relied on the Mitchell Claim policy limit demand as a pretext. Axis refused to alter its course when advised that any comparative fault in the Symes-Griffin Claim would reduce Fusion's liability in defending the Mitchell Claim. Axis' strategy could not be changed because the business decision to get out of the matter as quickly as possible had already been made when it accepted Old Republic's tender.

122. As Axis rushed to abandon its insured's legal defense, Old Republic through its Vice President, Bob Keough, on Friday September 18, 2021 at 2:50 PM assured Fusion that Old Republic would continue providing Fusion's and Ms. Georges' legal defense in the Symes-Griffin litigation even if Axis proceeded in settling only the Mitchell Claim.

123. Axis proceeded with settling Mr. Mitchell's Claim and it did so without ever contacting Ms. Symes-Griffin. Indeed, not only did Axis fail to contact Ms. Symes-Griffin, it advised Fusion that any effort to resolve Ms. Symes-Griffin's claim would have to be handled by Fusion, at Fusion's expense, and at the risk of failing to cooperate with Axis' pre-determined settlement plan.

124. In a vain effort to inoculate itself from clear malfeasance in dumping its policy limits to avoid defending its insureds, Axis granted Fusion one week to resolve all of the claims against it, within policy limits, and without taking any action that could be construed by Mitchell counsel as a counteroffer. In other words, Axis allowed its insured one week to do what it had in bad faith refused to attempt.

125. In addition to shifting the burden of attempting to resolve the claims made against Fusion and Ms. Georges back onto Fusion, Axis never informed Ms. Georges that it planned to settle the Mitchell Claim. Axis never contacted Ms. Georges to explain that it was handling her defense and settlement strategy. Axis, in fact, never advised Ms. Georges that by settling the Mitchell Claim and exhausting her insurance benefits that she was going to have to pay out of pocket defense costs, strategize her own legal defense, and pay excess judgments.

126. Clearly, Axis also never advised Ms. Georges that she, too, would have a one-week window to resolve all of the claims against her before Axis paid its limits and walked out the door. Axis shifting the burden to its insureds to do what it did not even attempt – address each claim against them—was unreasonable and action taken because Axis put its business interests ahead of its insureds from a point in time predating Old Republic’s official tender of the defense obligations to Axis.

127. Axis was planning its early exit while jointly controlling with Old Republic the handling of the Mitchell and Symes-Griffin Claims. On September 23, 2020 – only twenty days after taking over Fusion’s defense—Axis paid all of Fusion’s indemnity protection (\$3,000,000.00) to resolve the Mitchell Claim and left Fusion and Ms. Georges without a defense or indemnity relative to Ms. Symes-Griffin’s Claim.

128. Ms. Symes-Griffin tendered a second demand letter on Fusion in August 2021 and soon thereafter commenced litigation in Miami Dade Circuit Civil court. When Fusion tendered that letter to Old Republic for its defense, Old Republic immediately disclaimed all indemnity and defense obligations by August 11, 2021 letter despite its unequivocal promise to continue performing under the agreements.

129. Fusion should have never been put in the position to ask whether it would have a legal defense in a claim surviving the exhaustion of its indemnity protection. It certainly should never have been left with less than a week to resolve all of the claims against it. But the harms occasioned upon Fusion were compounded as Old Republic intentionally misled it about its ongoing legal defense.

130. Underscoring the lack of care and attention paid to resolving the claims against its insured, by email dated July 9, 2021 at 8:19 AM EST, Old Republic wrote to Fusion that despite its promise to at minimum continue in its defense of Fusion, it was denying Fusion's defense and had closed its file on the matter in part because "[n]o demand has been presented to date on behalf of Ms. Symes-Griffin." As stated in detail, above, Ms. Symes-Griffin's first demand was tendered to Old Republic some 18 months earlier on December 9, 2019.

131. Throughout the claims handling process, neither Old Republic nor Axis ever made contact with Ms. Georges to explain their claims handling strategy, its impact on her as an individual, the effect of multiple claims and potentially insufficient limits, her exposure to out of pocket defense costs if one claim was settled but another was not. She went completely ignored through the entire claims handling episode and is now exposed to an excess judgment, defense costs, and insurance coverage counsel costs.

132. The first time Ms. Georges learned that Ms. Symes-Griffin's Claim continued with her as a named defendant was when outside insurance counsel for Fusion contacted her as part of informal discovery follow-up while representing Fusion. She was and is shocked and confused at the utter inadequacy of her legal defense.

133. Fusion filed Civil Remedy Notices ripening all bad faith issues against Old Republic and Axis more than 60 days prior to the filing of this Complaint.

134. Ms. Georges filed Civil Remedy Notices ripening all bad faith issues against Old Republic and Axis more than 60 days prior to the filing of this Complaint.

135. All conditions precedent to the filing of this lawsuit have been satisfied.

VI. COUNTS

COUNT I. PROMISSORY ESTOPPEL (FUSION and MS. GEORGES versus OLD REPUBLIC)

136. Plaintiff realleges and reasserts the allegations set forth in Paragraphs 1 through 135 as if fully set forth herein.

137. Both Fusion and Ms. Georges were insureds under the Old Republic policies of insurance.

138. Fusion and Ms. Georges complied with each and every obligation placed upon them under the Old Republic policy of insurance. All policy premiums were timely paid and the policy was in full force and effect.

139. On Friday September 18, 2021 at 2:50, Old Republic through its Vice President, Bob Keough, expressly promised Fusion a continuing legal defense under the Old Republic contract of insurance against the remaining Symes-Griffin Claim.

140. Old Republic reasonably should have expected that its promise would induce Fusion's reliance as Old Republic controlled Fusion's liability defense, was Fusion's fiduciary, and had to that point managed Fusion's legal defense strategy.

141. Fusion did reasonably rely on Old Republic's promise, did not seek alternative defense counsel to defend the Symes-Griffin Claim, did not obtain counsel to advise it regarding how to respond to Old Republic's false promise, and altered its strategy in dealing with the remaining Symes-Griffin Claim because it thought it had a defense.

142. But when the Symes-Griffin Claim was revitalized through a second demand letter, and complaint filed in Miami Dade Circuit Civil Court, Old Republic doubled back on its promise to continue in its defense and instead disclaimed all insurance coverage.

143. Fusion suffered harm as a result of Old Republic's false promise including out-of-pocket defense costs, exposure to excess judgments, additional costs, losses, insurance coverage counsel legal fees, and others.

144. Plaintiffs have employed the undersigned attorneys to represent their interests in connection with obtaining the promised insurance coverage under the Old Republic policy of insurance, pre-suit demand and investigation, filing of civil remedy notices, and is obligated to the attorneys for the payment of their fees.

WHEREFORE, the Plaintiffs demand judgment or a decree that Old Republic is estopped from denying Fusion's legal defense and awarding Fusion its reasonable attorneys' fees pursuant to Florida Statute § 627.428, costs and any other relief this Court deems equitable, just and proper.

COUNT II. STATUTORY BAD FAITH § 624.155 (1)(a)1
(FUSION versus OLD REPUBLIC)

145. Plaintiff realleges and reasserts the allegations set forth in Paragraphs 1 through 135 as if fully set forth herein.

146. Florida Statute §626.9541(1)(o) prohibits insurers from knowingly collecting any sum as a charge for insurance in excess of or less than those specified in the policy and as fixed by the insurer.

147. Such additional charges are illegal insurance premiums under Florida's Insurance Code.

148. Through the DRA, Old Republic charged and collected from Fusion sums not specified in their policies of insurance, fixed by the insurer, or approved by Florida Office of

Insurance Regulation. Old Republic therefore charged Fusion illegal insurance premiums.

149. The illegal insurance premium sums include, among others, interest accruing on Fusion's cash principal, fees assessed to Fusion by the financial institution maintaining the DRA Fund, and costs assessed by the financial institution maintaining the DRA Fund.

150. Fusion was harmed as a result of Old Republic's illegal insurance premium scheme. Fusion's harms include but are not limited to loss of use, opportunity costs, business losses, lost profits, and professional fees, among others.

151. Fusion has employed the undersigned attorneys to represent its interests in connection with conducting an investigation, protecting it from Old Republic's bad faith insurance business practices, filing of civil remedy notices, and is obligated to the attorneys for the payment of their fees.

WHEREFORE, Plaintiff, Fusion, demands judgment against Defendant, Old Republic, for money damages, together with pre-judgment and post-judgment interest, attorneys' fees pursuant to Florida Statute §624.155, costs, and any other relief this Court deems equitable, just and proper.

COUNT III. CIVIL CONSPIRACY
TO COLLECT ILLEGAL INSURANCE PREMIUMS
(FUSION versus OLD REPUBLIC)

152. Plaintiff realleges and reasserts the allegations set forth in Paragraphs 1 through 135 as if fully set forth herein.

153. Throughout the month of September 2019, Old Republic, Alliance, and NARS combined to form a conspiratorial group as part of their insurance relationship with Fusion. They plotted to and did design and draft an agreement intended to trick Fusion into paying illegal insurance premiums.

154. The Conspirators utilized their superior knowledge of Florida's insurance laws and the complexities of insurance commercial insurance relationships to charge and collect from Fusion illegal insurance premiums in violation of Florida's Insurance Code. Charging illegal insurance premiums is expressly defined as an illegal, unfair and deceptive trade practice under Florida law.

155. The Conspirators, and each of them, performed overt acts contributing to their conspiracy to charge and collect from Fusion illegal insurance premiums. Each of the conspirators negotiated and contributed to the creation of the DRA, an agreement that memorializes the creation of a fund designed and intended by express contractual provision to pay out illegal insurance premiums in the form of monthly accrued interest, accounts fees, and account costs.

156. The Conspirators, and each of them, contributed to the design of the DRA which cloaked the illegal nature of the DRA as a routine insurance arrangement, tricking Fusion into paying more insurance premiums than the amount appearing on the face of the insurance policy as set by the insurers, or as understood by Florida's Office of Insurance Regulation.

157. The Conspirators designed their scheme to lure Fusion into paying more capital into the DRA Fund than would be required for a single policy term in order to maximize their ill-gotten accrued interest gains. The Conspirators shifted all of the costs of their conspiracy back onto Fusion through express DRA provision. The Conspirators agreed to have Fusion relinquish its rights to its own money property, as well as its rights to terminate the illegal deal, so that they could carry out their conspiracy over Fusion's protestations.

158. The Conspirators, and each of them, executed the DRA thereby expressly endorsing its illegal design, operation, and effects. On September 12, 2019, Alliance and Old Republic through their agent and Vice President, Robert Gambell, agreed to the conspiracy and ratified the

illegal DRA. On September 1, 2019, NARS through its President and Chief Executive Officer, Robert Ruryk, agreed to the conspiracy and ratified the illegal DRA.

159. NARS managed the DRA Fund and provided Fusion with reconciliations of DRA Fund activity against policy claims handling. As part of this function, NARS actively concealed its reinvestment of monthly interest accruing on the DRA Fund principal balance by withholding reconciliations relative to policy number 02. NARS advanced the conspiracy to collect illegal insurance premiums.

160. Alliance negotiated the DRA and performed in accordance with its illegal terms and conditions up to and including permitting its third-party administrator, NARS, to reinvest the illegal premiums into the DRA Fund for the purpose of generating larger illegal insurance premiums, faster. Alliance knew that it was not being reimbursed from the DRA Fund for premiums that it was paying as claims arose. Alliance advanced the conspiracy to collect illegal insurance premiums.

161. Old Republic negotiated the DRA and performed in accordance with its illegal terms and conditions up to and including permitting its third-party administrator, NARS, to reinvest the illegal premiums into the DRA Fund for the purpose of generating larger illegal insurance premiums, faster. Old Republic advanced the conspiracy to collect illegal insurance premiums.

162. Fusion was harmed by the conspiracy to trick it into paying illegal insurance premiums. The full magnitude, scope, and extent of the harms caused by the conspiracy will require expert accounting and analysis to fully understand but at a minimum, Fusion suffered loss of use, opportunity costs, lost profits, inappropriate costs, and inappropriate expenses.

163. The Conspirators, and each of them, engaged in the conspiracy with knowledge of

Florida law and regulation prohibiting their actions under the DRA, and also of their fiduciary duties to Fusion. With reckless indifference to Florida law and Fusion, the Conspirators each chose to violate Florida law and their fiduciary duties to Fusion for the purpose of profiteering on the generation and collection of illegal insurance premiums. Accordingly, this is an appropriate case for exemplary, punitive damages.

164. Old Republic, as a conspirator, is jointly and severally liable for the full measure of damages occasioned upon Fusion arising out of the conspiracy.

165. Fusion has employed the undersigned attorneys to conduct an investigation and protect it from the illegal, bad faith insurance practices of Old Republic, draft and tender pre-suit demands, filing of civil remedy notices, and is obligated to the attorneys for the payment of their fees.

WHEREFORE, Fusion demands judgment against Old Republic for its compensatory damages, nominal damages, and exemplary, punitive damages, together with pre-judgment and post-judgment interest, attorneys' fees pursuant to Florida Statute §624.155, costs, and any other relief this Court deems equitable, just and proper.

COUNT IV. INSURANCE BAD FAITH CLAIMS HANDLING § 624.155(1)(b)(1)
(FUSION & MS. GEORGES versus AXIS)

166. Plaintiffs reallege and reassert the allegations set forth in Paragraphs 1 through 135 as if fully set forth herein.

167. Both Fusion and Ms. Georges were insureds under the attached Axis policy of insurance. Fusion and Ms. Georges complied with each and every obligation placed upon them under the Axis policy of insurance. All policy premiums were timely paid and the policy was in full force and effect at all times material to the allegations in this Complaint.

168. As Fusion's and Ms. Georges' liability insurer, Axis had fiduciary, non-delegable

duties, including but not limited, to:

- i. use the same degree of care and diligence as a person of ordinary care and prudence should exercise in the management of his own business;
 - ii. Exercise such control in handling the claims against Fusion and Ms. Georges and in making decisions with regard to both settlement and litigation in good faith and with due regard for the interests of Fusion and Ms. Georges;
 - iii. To timely and thoroughly investigate all of the claims against its insured;
 - iv. To timely and properly evaluate the claims against Fusion and Ms. Georges and the risk to each arising from the various claims;
 - v. to timely advise Fusion and Ms. Georges of settlement opportunities;
 - vi. to advise Fusion and Ms. Georges as to the probable outcome of litigation;
 - vii. to warn Fusion and Ms. Georges of the possibility of excess judgments and to advise Ms. Georges and Fusion of any steps that they may each take to avoid excess judgments;
 - viii. to timely and properly evaluate the exposure presented by the Mitchell Claim and also the Symes-Griffin Claim;
 - ix. to settle as many claims as possible within the policy limits;
 - x. to settle claims when, under all circumstances, it could and should have done so, had it acted fairly and honestly towards its insured and with due regard for her or his interests;
 - xi. to avoid indiscriminately settling selected claims and leaving the insured at risk of excess judgements that could have been minimized by wiser settlement practice.
169. Axis breached its duties to Fusion and Ms. Georges by:

- i. Putting its business interests ahead of its insureds in the management of the claims against Fusion and Ms. Georges;
- ii. Unreasonably managing the claims against Fusion and Ms. Georges by failing to make any contact with one claimant (Ms. Symes-Griffin) altogether;
- iii. Unreasonably managing the claims against its insured by indiscriminately settling the Mitchell Claim without sufficient knowledge, investigation, or understanding of the other claims pending against its insureds;
- iv. Failing to advise Ms. Georges of any of the Symes-Griffin or Mitchell Claim settlement opportunities;
- v. Failing to advise Ms. Georges of its settlement strategy and litigation plans;
- vi. Failing to advise Ms. Georges of the fact of the Mitchell settlement;
- vii. Failing to advise Ms. Georges of the risk of an excess judgment in light of the Mitchell settlement;
- viii. Failing to advise Ms. Georges that she will face an excess judgment in the Symes Griffin Claim as a result of the Mitchell settlement;
- ix. Failing to notify Ms. Georges at any point in time that it was controlling her legal defense;
- x. Failing to notify Ms. Georges that as a result of its settlement strategy it was no longer running her legal defense;
- xi. Failing to make any effort to settle all or any combination of the claims against Fusion and Ms. Georges before simply settling the Mitchell Claim;

170. Axis' breaches grew out of it putting its own business interests ahead of its insureds' and formulating a strategy that served its own business interests without regard for the

impact of that strategy on either Ms. Georges or Fusion.

171. As a direct and immediate consequence of Axis' bad faith insurance claims handling, Fusion and Ms. Georges have suffered harms including but not limited to out-of-pocket defense costs; exposure to excess judgments; emotional distress; legal fees, costs, expenses, protracted litigation, harm to reputation, among others. The full magnitude, scope, and extent of the harms caused by bad faith insurance claims handling practices may require expert accounting and analysis to fully understand.

172. Fusion and Ms. Georges employed the undersigned attorneys to represent their interests in protecting them from Axis' bad faith claims handling business practices, pre-suit demand and investigation, filing of civil remedy notices, and is obligated to the attorneys for the payment of their reasonable attorney's fees.

WHEREFORE, Plaintiffs, Fusion and Ms. Georges, demand judgment against Defendant, Axis, for full payment of any excess judgments arising from the Underlying Litigations, their legal defense, money damages, pre-judgment and post-judgment interest, attorneys' fees pursuant to Florida Statute §624.155, costs, and any other relief this Court deems equitable, just and proper.

COUNT V. INSURANCE BAD FAITH CLAIMS HANDLING § 624.155(1)(b)(1)
(FUSION & MS. GEORGES versus OLD REPUBLIC)

173. Plaintiff realleges and reasserts the allegations set forth in Paragraphs 1 through 135 as if fully set forth herein.

174. Both Fusion and Ms. Georges were insureds under the attached Old Republic policy of insurance. Fusion and Ms. Georges complied with each and every obligation placed upon them under the Old Republic policy of insurance. All policy premiums were timely paid and the policy was in full force and effect at all times material to the allegations in this Complaint.

175. As Fusion's and Ms. Georges liability insurer, Old Republic had fiduciary, non-

delegable duties, including but not limited, to:

- i. use the same degree of care and diligence as a person of ordinary care and prudence should exercise in the management of his own business;
- ii. Exercise such control in handling the claims against Fusion and Ms. Georges and in making decisions with regard to both settlement and litigation in good faith and with due regard for the interests of Fusion and Ms. Georges;
- iii. To timely and thoroughly investigate the claims;
- iv. To timely and properly evaluate the claims against Fusion and Ms. Georges and the risk to each arising from the various claims;
- v. to timely advise Fusion and Ms. Georges of settlement opportunities;
- vi. to advise Fusion and Ms. Georges as to the probable outcome of litigation;
- vii. to warn Fusion and Ms. Georges of the possibility of excess judgments and to advise Ms. Georges and Fusion of any steps that they may each take to avoid excess judgments;
- viii. to timely and properly evaluate the exposure presented by the Mitchell Claim and also the Symes-Griffin Claim;
- ix. to settle as many claims as possible within the policy limits;
- x. to settle claims when, under all circumstances, it could and should have done so, had it acted fairly and honestly towards its insured and with due regard for her or his interests;
- xi. to avoid indiscriminately settling selected claims and leaving the insured at risk of excess judgements that could have been minimized by wiser settlement practice;
- xii. to refrain from misleading its insured about its ongoing duty to defend Fusion, or

its intentions to continue performing under its contract of insurance.

176. Old Republic breached its duties to Fusion and Ms. Georges by:
- i. Putting its business interests ahead of its insureds in the management of the claims against Fusion and Ms. Georges;
 - ii. Unreasonably managing the claims against Fusion and Ms. Georges by failing to make any contact with one claimant (Ms. Symes-Griffin) altogether;
 - iii. Unreasonably managing the claims against its insured by indiscriminately settling the Mitchell Claim without sufficient knowledge, investigation, or understanding of the other claims pending against its insureds;
 - iv. Failing to advise Ms. Georges of any of the Symes-Griffin or Mitchell Claim settlement opportunities;
 - v. Failing to advise Ms. Georges of its settlement strategy and litigation plans;
 - vi. Failing to advise Ms. Georges of the fact of the Mitchell settlement;
 - vii. Failing to advise Ms. Georges of the risk of an excess judgment in light of the Mitchell settlement;
 - viii. Failing to advise Ms. Georges that she will face an excess judgment in the Symes Griffin Claim as a result of the Mitchell settlement;
 - ix. Failing to notify Ms. Georges at any point in time that it was controlling her legal defense;
 - x. Failing to notify Ms. Georges that as a result of its settlement strategy it was no longer running her legal defense;
 - xi. Failing to make any effort to settle all or any combination of the claims against Fusion and Ms. Georges before simply settling the Mitchell Claim;

xii. Misleading Fusion about its ongoing duty to defend Fusion, and its intentions to continue performing its under its contract of insurance.

177. Old Republic's breaches are an immediate result of the insurer putting its own pecuniary business interests ahead of its insured's interests under the contract of insurance.

178. As a direct and immediate consequence of Old Republic's bad faith insurance claims handling, Fusion and Ms. Georges have suffered harms including but not limited to out-of-pocket defense costs; exposure to excess judgments; emotional distress; insurance coverage counsel legal fees, protracted litigation, harm to reputation, among others. The full magnitude, scope, and extent of the harms caused by Old Republic's bad faith insurance claims handling practices may require expert accounting and analysis to fully understand.

179. Fusion and Ms. George's have employed the undersigned attorneys to represent their interests in protecting their rights to insurance coverage under the Old Republic policy of insurance, protection from Old Republic's bad faith insurance practices, pre-suit demand and investigation, filing of civil remedy notices and demand letters, and are obligated to the attorneys for the payment of their reasonable attorney's fees.

WHEREFORE, Plaintiffs, Fusion and Ms. Georges, demand judgment against Defendant, Old Republic, for full payment of any judgments or settlements arising out of the Underlying Litigations, their legal defense, costs, expenses, money damages, pre-judgment and post-judgment interest, attorneys' fees pursuant to Florida Statute §624.155, and any other relief this Court deems equitable, just and proper.

COUNT VII. CONSTRUCTIVE FRAUD
(FUSION versus OLD REPUBLIC)

180. Plaintiff realleges and reasserts the allegations set forth in Paragraphs 1 through

135 as if fully set forth herein.

181. The DRA was presented to Fusion as a necessary precondition for Old Republic and Alliance to write liability insurance in favor of Fusion. Along with their third-party administrator and agent, NARS, the Conspirators created and proposed the DRA to Fusion.

182. But Fusion is a logistics company only and therefore not expert in insurance business dealings. It relies on its insurers and other third parties to provide it guidance on insurance matters. Each of the Conspirators are expert in insurance dealings and Fusion relied on their duties.

183. As Fusion's liability insurer, Old Republic is bound to Fusion by considerable fiduciary duties to protect Fusion's interests. NARS holds itself out as expert in all things insurance and, as the express agent of Old Republic, accepted fiduciary responsibilities to protect Fusion's property and interests.

184. On its face, the DRA charges illegal insurance premiums (*i.e.* charges for insurance that are not included in the premium). It shifts additional fees and costs for insurance to Fusion that are not reflected in the insurance premiums that Fusion paid for the Old Republic insurance. But Old Republic lured Fusion into the DRA claiming that it required security for future deductible payments (even though there was no way to know how many claims or during which policy periods those claims would occur) with the intent to misappropriate Fusion's property to generate illegal insurance premiums.

185. Old Republic misrepresented that the DRA was a security fund against which it could simply pay out deductibles. Old Republic suppressed the truth that the DRA was an interest-bearing passive investment fund accumulating illegal insurance premiums in its favor.

186. Old Republic expert in Florida insurance law and regulation. It is registered with Florida's Department of Insurance Regulation and has been in excess of forty years. On

information and belief, Old Republic maintains internal insurance and regulatory compliance attorneys. It knew that it was misrepresenting to Fusion a passive investment fund designed to gather illegal insurance premiums as an advance deductible fund.

187. NARS is Old Republic's express agent and a corporation at home in Florida, that is expert in Florida insurance law and regulation. NARS routinely adjusts claims for innumerable insurers doing business in Florida, collects and pays deductibles as a systematic business function. NARS knew that it was misrepresenting to Fusion a passive investment fund designed to gather illegal insurance premiums as an advance deductible fund.

188. The intention of Old Republic was to induce Fusion into fronting a large sum of cash to generate additional, illegal insurance premiums that it could skim on a monthly basis. The DRA was a scheme to turn Fusion into a profit-center.

189. Fusion, trusting its insurance advisor--the entity that it believed would be the one *protecting it against liability*—justifiably relied on Old Republic's misrepresentations and entered into the DRA and deposited \$2,757,999.00 into the DRA Fund to be controlled absolutely by Old Republic.

190. Old Republic's illegal insurance premium skimming agreement—the DRA—is memorializes Old Republic's abuse of its position of trust and influence over Fusion. Old Republic engaged in unconscionable abuses of its position of power, influence, and control relative to Fusion in tricking its insured into funding the illegal premium investment fund.

191. The conflicts of interest in its insurance relationships with Fusion that are borne of the DRA are innumerable. Because Old Republic literally maintained two sets of books for the management of Fusion's insurance business, they knowingly contracted through the DRA to mislead, conceal, and double deal with its insured *at the outset* of their business relationship.

192. Following innumerable demands for the return of all property held within the DRA Fund, Old Republic refused to return the property until outside insurance counsel made demand. During that time, it spent Fusion's cash property to settle bank fees and banking costs, and reinvested the interest accruing on Fusion's cash principal to maximize its illegal pecuniary gain.

193. Fusion has been harmed through the loss of use of its nearly 3 million dollars in operating capital, actual damages, compensatory damages, has lost business, suffered lost profits, opportunity cost, loss of investment, business distress, and insolvency. The full extent of Fusion's financial harms is not fully understood and will require further analysis.

194. Old Republic knew Florida law and regulation prohibited its actions under the DRA, and also its fiduciary duties to Fusion. With reckless indifference to Florida law and Fusion, Old Republic chose to profiteer from its insured through the generation and collection of illegal insurance premiums under the DRA. Accordingly, this is an appropriate case for exemplary, punitive damages.

WHEREFORE, Fusion demands judgment against Old Republic for its compensatory damages, nominal damages, and exemplary, punitive damages, together with pre-judgment and post-judgment interest, attorneys' fees, costs, expenses, and any other relief this Court deems equitable, just and proper.

COUNT VIII. CONSPIRACY TO COMMIT FRAUD
(FUSION versus OLD REPUBLIC)

195. Plaintiff realleges and reasserts the allegations set forth in Paragraphs 1 through 135 and 151 through 165 and 180 through 194 as though fully set forth herein.

196. The DRA was presented to Fusion as a necessary precondition for Old Republic and Alliance to write liability insurance in favor of Fusion. Along with their third-party administrator and agent, NARS, the Old Republic and Alliance created and proposed the DRA to

Fusion.

197. But Fusion is a logistics company only and therefore not expert in insurance business dealings. It relies on its insurers and other third parties to provide it guidance on matters insurance. Each of the Conspirators are expert in insurance dealings and Fusion relied on them for their expertise and placed trust in them given their fiduciary duties to Fusion.

198. As Fusion's liability insurers, each of Alliance and Old Republic bound to Fusion by considerable fiduciary duties to protect Fusion's interests. NARS holds itself out as expert in all things insurance and accepted fiduciary responsibilities to protect Fusion's property and interests by contracting to take absolute control over Fusion's cash personal property held in the DRA Fund.

199. On its face, the DRA charges illegal insurance premiums (*i.e.* charges for insurance that are not included in the premium). It shifts additional fees and costs for insurance to Fusion that are not reflected in the insurance premiums that Fusion paid for the Old Republic or Alliance insurance. But the Conspirators lured Fusion into the DRA claiming that they required security for future deductible payments (even though there was no way to know how many claims or during which policy periods those claims would occur) with the intent to misappropriate Fusion's property to generate illegal insurance premiums.

200. The Conspirators, and each of them, misrepresented that the DRA was a security fund against which they could simply pay out deductibles. The Conspirators, and each of them, suppressed the truth that the DRA was an interest-bearing passive investment fund accumulating illegal insurance premiums in their favor.

201. Each of the Conspirators is expert in Florida insurance law and regulation. Both Old Republic and Alliance are registered with Florida's Department of Insurance Regulation. On

information and belief, each maintains internal insurance and regulatory compliance attorneys. Each knew that it was misrepresenting to Fusion a passive investment fund designed to gather illegal insurance premiums as an advance deductible fund.

202. NARS is a corporation at home in Florida, that is expert in Florida insurance law and regulation. NARS routinely adjusts claims for innumerable insurers doing business in Florida, collects and pays deductibles as a systematic business function. NARS knew that it was misrepresenting to Fusion a passive investment fund designed to gather illegal insurance premiums as an advance deductible fund.

203. The intention of the Conspirators, each of them, was to induce Fusion into fronting a large sum of cash to generate additional, illegal insurance premiums that they could skim on a monthly basis. The DRA was a scheme to turn their principal, insured, and beneficiary into a profit-center.

204. Fusion, trusting its insurance advisors--the entities that it believed would be the ones *protecting it against liability*—justifiably relied on each of the Conspirators misrepresentations and entered into the DRA and deposited \$2,757,999.00 into the DRA Fund to be controlled absolutely by the Conspirators.

205. The Conspirators illegal insurance premium skimming agreement—the DRA—is illegal and memorializes an abuse of the Conspirators position of trust and influence over their insured, Fusion. Each of the Conspirators engaged in unconscionable abuses of their position of power, influence, and control relative to Fusion in tricking their insured into funding the illegal premium investment fund.

206. The Conspirators, and each of them, combined with one another for the purpose of utilizing their superior knowledge of Florida’s insurance laws and the complexities of insurance

commercial insurance relationships to charge and collect from Fusion illegal insurance premiums in violation of Florida's Insurance Code. Charging illegal insurance premiums is expressly defined as an illegal, unfair and deceptive trade practice under Florida law.

207. The Conspirators, and each of them, performed overt acts contributing to their conspiracy to charge and collect from Fusion illegal insurance premiums. Each of the conspirators negotiated and contributed to the creation of the DRA, an agreement that memorializes the creation of a fund designed and intended by express contractual provision to pay out illegal insurance premiums in the form of monthly accrued interest, accounts fees, and account costs.

208. The Conspirators, and each of them, contributed to the design of the DRA which cloaked the illegal nature of the DRA as a routine insurance arrangement, tricking Fusion into paying more insurance premiums than the amount appearing on the face of the insurance policy, as set by the insurers, or as understood by Florida's Office of Insurance Regulation.

209. The Conspirators, and each of them, executed the DRA thereby expressly endorsing its illegal design, operation, and effects.

210. NARS managed the DRA Fund and provided Fusion with reconciliations of DRA Fund activity against policy claims handling. As part of this function, NARS actively concealed its reinvestment of monthly interest accruing on the DRA Fund principal balance by withholding reconciliations relative to policy number 02.

211. Alliance negotiated the DRA and performed in accordance with its illegal terms and conditions up to and including permitting its third-party administrator, NARS, to reinvest the illegal premiums into the DRA Fund for the purpose of generating larger illegal insurance premiums, faster. Alliance knew that it was not being reimbursed from the DRA Fund for premiums that it was paying as claims arose.

212. Old Republic negotiated the DRA and performed in accordance with its illegal terms and conditions up to and including permitting its third-party administrator, NARS, to reinvest the illegal premiums into the DRA Fund for the purpose of generating larger illegal insurance premiums, faster.

213. The conflicts of interest in their insurance relationships with Fusion that are borne of the DRA are innumerable. Because the Conspirators literally maintained two sets of books for the management of Fusion's insurance business, they knowingly contracted through the DRA to mislead, conceal, and double deal with their insured *at the outset* of their business relationship.

214. Following innumerable demands for the return of all property held within the DRA Fund, the Conspirators refused to return Fusion's property. During that time, they spent Fusion's cash property to settle their bank fees and banking costs, and reinvested the interest accruing on Fusion's cash principal to maximize their illegal pecuniary gain.

215. Fusion has been harmed through the loss of use of its nearly 3 million dollars in operating capital, actual damages, compensatory damages, has lost business, suffered lost profits, opportunity cost, loss of investment, business distress, attorney's fees, insurance consultancy fees, and insolvency. The full extent of Fusion's financial harms is not fully understood and will require further analysis.

216. Old Republic knew Florida law and regulation prohibited its actions under the DRA, and also its fiduciary duties to Fusion. With reckless indifference to Florida law and Fusion, Old Republic chose to profiteer from its insured through the generation and collection of illegal insurance premiums under the DRA. Accordingly, this is an appropriate case for exemplary, punitive damages.

217. As a conspirator, Old Republic is jointly and severally liable for the harms

occasioned upon Fusion in connection with the conspiracy.

WHEREFORE, Plaintiffs, Fusion and Ms. Georges, demand judgment against Old Republic for compensatory, nominal, and exemplary, punitive damages, their attorney's fees, pre-judgment and post-judgment interest, costs, expenses, a full accounting of the DRA Fund and Claim Loss Account with deductible payment, and any other relief that this Court deems equitable, just, and proper.

COUNT IX. EQUITABLE ACCOUNTING
(FUSION versus OLD REPUBLIC, ALLIANCE, NARS)

218. Plaintiff realleges and reasserts the allegations set forth in Paragraphs 1 through 96 as if fully set forth herein.

219. The Deductible Reimbursement Agreement entered into between Fusion on the one hand, and Old Republic, Alliance, and NARS, on the other hand, involves an extensive number of records and complicated accounting and reconciliation against deductible payment activity occurring in another financial account.

220. Fusion's remedy at law is inadequate and lacking. Fusion's legal remedies are not as expeditious as those found in equity. This Court's exercise of its equitable powers is appropriate.

WHEREFORE, FUSION requests a decree requiring Old Republic to conduct and provide it with an accounting and reconciliation of the DRA Fund against the Claims Loss Accounts with deductible payments and all applicable account statement to reveal the *actual* deductible payments, payment timing, and claims across the history of their insurance relationship.

VII. DEMAND FOR TRIAL BY JURY

FUSION and MS. GEORGES demand trial by jury.

Respectfully Submitted,

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