

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 1:10-CV-20560-HOEVELER

FOLKSAMERICA REINSURANCE CO.  
n/k/a WHITE MOUNTAINS REINSURANCE  
COMPANY OF AMERICA, a New York  
corporation,

Plaintiff,

vs.

CONSTRUCTORA DEL LITORAL, S.A., an  
Ecuadorian corporation, and JOSE LEONARD  
CARVAJAL HUERTA, an individual,

Defendants.

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**DEFENDANTS' MOTION TO DISMISS  
FOR INSUFFICIENCY OF SERVICE OF PROCESS**

Defendants, CONSTRUCTORA DEL LITORAL, S.A. ("COLISA") and JOSE LEONARDO CARVAJAL HUERTA ("Mr. Carvajal"), respectfully request that this Court enter an order dismissing this action because of insufficiency of the purported service of process by Plaintiff, FOLKSAMERICA REINSURANCE CO., n/k/a WHITE MOUNTAINS REINSURANCE COMPANY OF AMERICA ("FOLKSAMERICA"), and as grounds state the following:

**I. REMOVAL AND SPECIAL APPEARANCE**

1. On February 23, 2010, Defendants removed this proceeding from the Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida, to this Court on the basis of diversity jurisdiction. (DE 1) As used herein State Court Action shall refer to the action that was removed.

2. Defendants make their appearance in this Court for the sole and limited purpose of contesting the process purportedly served on them.<sup>1</sup> The Defendants do not waive and specifically reserve their rights to move to dismiss the Amended Complaint on grounds of lack of subject matter jurisdiction, lack of personal jurisdiction,<sup>2</sup> inconvenient forum, failure to state a cause of action, and failure to join indispensable parties.

## II. BACKGROUND

3. COLISA is an Ecuadorian company, registered under the laws of Ecuador, headquartered and operating in Samborondon County, Guayas Province, Republic of Ecuador.<sup>3</sup>

4. Mr. Carvajal is a citizen and resident of Ecuador and resides in Samborondon County, Guayas Province, Republic of Ecuador.<sup>4</sup>

5. The underlying lawsuit alleges certain claims by Plaintiff, a “global multi-line reinsurance company,”<sup>5</sup> for amounts paid in connection with a public construction project which was assigned to COLISA by Consorcio Bate.<sup>6</sup> However, Plaintiff’s causes of action against the Defendants are not sufficiently set forth due to Plaintiff’s failure to attach Exhibits A and B to the Amended Complaint, which presumably form the basis upon which Defendants’ liability is founded.

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<sup>1</sup> A removing party does not waive objection to mode of service of process solely by removing case to federal court. *Leach v. BB & T*, 232 F.R.D. 545 (N.D.W.Va. 2005); *see also Resolution Trust Corp. v. Pharaon*, 915 F.Supp. 351 (S.D.Fla. 1996) (removal did not result in waiver of defense of personal jurisdiction).

<sup>2</sup> *See Banco de Costa Rica v. Rodriguez*, 573 So.2d 833 (Fla. 1991) (motion to quash purely defensive and not a request for relief inconsistent with a defense of lack of personal jurisdiction).

<sup>3</sup> *See* Exhibits B and B-1.

<sup>4</sup> *See* Exhibit D.

<sup>5</sup> *See* Amended Complaint at paragraph 7. (DE 1-2, p. 18)

<sup>6</sup> *Id* at paragraphs 8 – 12.

6. Ecuador, like the United States, is a signatory to the Inter-American Convention on Letters Rogatory and the Additional Protocol to the Inter-American Convention on Letters Rogatory (together, the "IAC").<sup>7</sup> True and correct copies of the Convention and Additional Protocol, as found at 28 U.S.C.A. §1781, accompany this motion at Appendix I.

7. On May 25, 2009, the Circuit Court in the State Court Action entered its Order Granting Plaintiff's Motion to Effect Service of Process Pursuant to the Inter-American Convention on Letters Rogatory and Additional Protocol and for Enlargement (sic) of Time to Effect Service of Process until October 8, 2009. (DE 1-2, p. 9). Plaintiff was unable to effect service by October 8, 2009, and moved for a second enlargement of time to serve process in accordance with the Inter-American Convention. On or around October 19, 2009,<sup>8</sup> the Circuit Court in the State Court Action granted the motion and enlarged the time for service of process until February 5, 2010. True and correct copies of Plaintiff's Motion for Second Enlargement of Time to Effect Service of Process and Order Granting Plaintiff's Motion are attached as Composite Exhibit A.

8. On or around February 3, 2010, via Federal Express delivery, a package of documents was delivered to Mr. Carvajal at his home address in Samborondon, Ecuador. Attached as the first page to the package is Plaintiff's Notice of Filing Certificates of Service which asserts that service of process of the Amended Complaint had been effected on the

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<sup>7</sup> Inter-American Convention on Letters Rogatory, S. Treaty Doc. 98-27, 98th Cong., 2d sess., (1984), pp. III-V, XII; 28 U.S.C. § 1781, was ratified by Ecuador on September 10, 1975, and ratified by the United States on July 28, 1988. The Additional Protocol to the Inter American Convention on Letters Rogatory, May 8, 1979, S. Treaty Doc. No. 98-27, 58 Fed.Reg. 31, 132 (1988), was ratified by Ecuador on April 27, 1982, and by the United States on November 10, 1986.

<sup>8</sup> The Order does not contain the date immediately above Circuit Judge William Thomas' signature, but the Clerk's file-stamp indicates October 19, 2009 as the date of filing with the Clerk.

Defendants in accordance with the IAC on November 19, 2009. Also included in the package were a copy of an Amended Complaint and a Spanish translation version of the Amended Complaint, as well as Summonses and Summons by Subpoena (returns of service) for the Defendants and their translations. A true and complete copy of all of the papers received by the Defendants was filed with the Notice of Removal and is docketed as DE 1-2. (Unless otherwise indicated, page numbers referred to herein shall refer to the docket page numbers for DE 1-2.)

9. Although the Amended Complaint makes reference to, and relies upon, Exhibits A and B, no such Exhibits were attached to the Amended Complaint, nor to the translated Amended Complaint.<sup>9</sup>

10. The Summonses which were issued to COLISA by the State Court Action Clerk provide as the addresses for service:

Kilometro 8,5 Via Guayaquil-Daule  
Canton Guayaquil, provincia del Guayas  
Ecuador

OR

Pedro Carbo No. 531 y Velez  
Edificio Perez Quintero 8vo piso  
Oficina 801  
Canton Guayaquil provincia del Guayas  
Ecuador

*See* English Summonses at pp. 10 – 13 and Spanish translation at pp. 39 – 40.

11. The English translation of the process server's returns of service on COLISA indicate service by delivery to a "Shop Clerk" on November 13, 2009 (p. 68) and by

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<sup>9</sup> The last page of the Amended Complaint in English is p. 23, and p. 24 begins the Request for Service Abroad of Judicial or Extrajudicial Documents Pursuant to the Additional Protocol to the Inter-American Convention on Letters Rogatory. The last page of the Spanish translation of the Amended Complaint is p. 50, p. 51 is not identified as an exhibit, and p. 52 begins Certificate of Competence and Accuracy dated September 18, 2009, executed by Dr. Luis A. de la Vega for Professional Translating Services attesting to the truth and accuracy of the translation of the attached document, consisting of 15 pages.

“affixed...subpoena on the entry door, where as there was no one there to receive the aforementioned subpoena” on November 17, 2009 (p. 70), and on November 19, 2009 (p. 72). The returns of service do not indicate which of the two addresses the process server visited on November 13, 17 and 19, 2009.

12. Hector Emilio Cueva Abarca (“Mr. Abarca”) is the General Manager of COLISA, having been appointed to that position on August 31, 2009, and having accepted the position on September 2, 2009. Exhibit B-2. According to Mr. Abarca, COLISA does not have an office at either of the two addresses listed on the Summonses and returns. Exhibit C.

13. The registered address of COLISA is in Samborondon County, Guayas Province, Republic of Ecuador: “Urbanizacion Guayaquil Tennis” located on the road “Via La Puntilla – Samborondon, km 4 ½ , Manzana A., Edificio Colony Tennis, Planta Baja Oeste.” Exhibit B.

14. According to the official records of the Office of the Registrar of Companies, COLISA officially changed its domicile from Guayaquil County to Samborondon County by public deed authorized on September 15, 2004 and recorded on February 14, 2005. Exhibit B-1 is a true and correct copy of the translated public record of COLISA’s change of domicile.

15. COLISA was not served with legal process of the State Court Action.<sup>10</sup>

16. The Summons which was issued with respect to Mr. Carvajal provided a correct address for him in Samborondon County. However, the returns of service regarding Mr. Carvajal indicate service at the two addresses listed on the COLISA Summons in the County of Guayaquil. The process server claims to have served Mr. Carvajal by delivery to a “Shop Clerk” on November 13, 2009 (p. 74) and by affixing the “subpoena” to the entry door on November 17 and 19, 2009 (pp. 76, 78). Furthermore, as with the COLISA returns, the returns of service for

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<sup>10</sup> See Certification by COLISA’s General Manager wherein he states that “we have not received a Subpoena regarding or relating to a lawsuit or proceeding filed by Folks America Reinsurance Co.” (Exhibit C)

Mr. Carvajal do not indicate which of the two addresses were visited by the process server when he delivered process to a “Shop Clerk” or posted service on the door.

17. Since neither of the two addresses listed on the returns of service was a “registered address” for Mr. Carvajal, and there was no person on the premises at either address authorized to accept service of process for Mr. Carvajal, he was not served with legal process of the State Court Action. Attached hereto and incorporated herein as Exhibit D are true and correct copies of the original and translated Certification of Jose Leonardo Carvajal Huerta where Mr. Carvajal has certified his accurate residential address as Samborondon County and declares that he has not received a subpoena regarding a legal action by the Plaintiff.

18. Additionally, the purported service on both COLISA and Mr. Carvajal failed to include the Certificate of Execution (Form C/Annex to the Additional Protocol to the Inter-American Convention on Letters Rogatory) which, under the IAC, must be executed by the Central Authority in Ecuador for purposes of certifying that delivery of the documents was actually made.<sup>11</sup>

### **III. GROUNDS FOR DISMISSAL & NOTICE OF FOREIGN LAW ISSUE**

19. The State Court Action Judge ordered service to be made in accordance with the IAC. The service described in DE 1-2 did not follow the requirements of the IAC because the Exhibits to the Amended Complaint were not served as required by Article 8 of the Inter-American Convention on Letters Rogatory and Article 3(b) of the Additional Protocol; and Form C, Certificate of Execution, as required by Article 3(e) of the Additional Protocol, was not completed and returned by the Central Authority of Ecuador.

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<sup>11</sup> Pages 24 through 30 are the English versions of Forms A, B and C; the Spanish translations are at pages 31 through 37 of DE 1-2. There is no corresponding executed Form C/Formulario C which is required to be completed in order to accomplish service in accordance with the Additional Protocol.

20. More importantly, the purported service of process on the Defendants is insufficient under the IAC because it did not meet the requirements of the laws of Ecuador for service of process as set forth in Article 10 of the IAC which provides: “Letters Rogatory shall be executed in accordance with the laws and procedural rules of the State of Destination.”

21. Ecuador’s laws governing service of process are at issue. Thus, pursuant to Fed. R. Civ. P. 44.1, the Defendants hereby place the Court and all other interested parties on formal notice of their intent to raise an issue concerning foreign law. A true and correct copy of the laws of Ecuador governing service of process, along with the legal opinion of Attorney Alejandro J. Minuche interpreting the laws is attached as Exhibit E in support of this motion.<sup>12</sup>

22. Under Florida law, the Amended Complaint as purportedly served would be subject to dismissal for failure to state a cause of action because Exhibits A and B were not attached. Rule 1.130(a), Fla.R.Civ.P. requires that contracts or documents upon which the action may be brought should be attached to the pleadings.

23. Additionally, the Plaintiff has alleged that jurisdiction is based on the grounds that Defendants have committed a tortious act within Florida and breached an agreement requiring payment in Florida. However, because Plaintiff has failed to attach the alleged agreement to the Amended Complaint, the Amended Complaint is incomplete at this time, and Defendants reserve their right to assert the defense of lack of personal jurisdiction under applicable Florida statutory provisions regarding jurisdiction over nonresidents.

24. Finally, the Court lacks personal jurisdiction over the Defendants because there simply was no service of process at all under Florida or Ecuadorian law: neither defendant was

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<sup>12</sup> Exhibit E consists of 12 pages. It includes a side-by-side translation of Mr. Minuche’s legal opinion, the actual text of the laws governing service of process which are printed in italics (pp. 1-7), and a photocopy of the text of the laws from the official codification of the laws (pp. 8-12).

actually “served” with legal process. The addresses used for service on both Defendants were not their addresses and neither Defendant had a representative authorized to accept legal service at the listed locations.

25. Because Plaintiff failed to comply with the requirements of the IAC, as well as Florida law, regarding process of service, this case should be dismissed. Alternatively, process should be quashed and Plaintiff should be required to properly serve the Defendants in accordance with the procedural rules governing service of process of foreign nationals.

#### IV. MEMORANDUM OF LAW

This case was removed to this Court by Defendant for purposes of challenging the Plaintiff’s purported service.<sup>13</sup> A motion to dismiss for insufficient service of process is the proper vehicle for challenging the mode of delivery or the lack of delivery of the summons and complaint. Fla. R. Civ. P. § 1.140(b)<sup>14</sup>; *Cheshire v. Birenbaum*, 688 So.2d 430 (Fla. 3d DCA 1997) (dismissal warranted and harmless error not applied where service was insufficient on its face). Where service of process was not effected in accordance with the procedures governing process, dismissal of the action is warranted. *Schupak v. Sutton Hill Associates*, 710 So.2d 707 (Fla. 4<sup>th</sup> DCA 1998) (reversed, leaving process with apartment doorman is insufficient). Nevertheless, should this Court determine that service of process is insufficient, it has broad discretion to dismiss the action or to retain the case but quash the service that has been made on defendant. *Carlini v. State Dept. of Legal Affairs*, 521 So.2d 254 (Fla. 4<sup>th</sup> DCA 1988).

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<sup>13</sup> Removal does not constitute a general appearance which would waive a right to object to lack of personal jurisdiction. *Norsyn, Inc. v. Desai*, 351 F.3d 825 (8<sup>th</sup> Cir. 2003) (after removal, plaintiff’s action dismissed by district court for improper service).

<sup>14</sup> Because the District Court’s jurisdiction is derivative in nature, the law to be considered in determining the validity of service of process in this case is Florida law. *See State of Minnesota v. United States*, 305 U.S. 382 (1939) (no jurisdiction conferred to federal court where not originally obtained by state court); *Harrison v. Steffen*, 51 F.Supp. 225 (D.C.KY. 1943) (in removed case, sufficiency of service of process is determined by State law).



By orders in the State Court Action dated May 25, 2009 and October 19, 2009, Plaintiff was required to effect service of process on the Defendants in accordance with the IAC on Letters Rogatory and the Additional Protocol. Letters Rogatory are the medium whereby one country, speaking through one of its courts, requests another country, acting through its own courts and by methods of court procedure peculiar thereto and entirely within the latter's control, to assist the administration of justice in the former country. *The Signe*, 37 F.Supp. 819 (E.D.La. 1941).<sup>15</sup>

In the United States, the Central Authority for making the request is the Office of International Judicial Assistance of the U.S. Department of Justice; in Ecuador it is the Ministry of Foreign Affairs, Departamento de Juridico.<sup>16</sup> State and federal court actions originating in the United States requesting service in a foreign country originate with a Request for Service Abroad of Judicial or Extrajudicial Documents Pursuant to the Additional Protocol to the Inter-American Convention on Letters Rogatory, and consisting of Form A, entitled "Letter Rogatory," Form B, entitled "Essential Information for the Addressee," and Form C, a "Certificate of Execution." Plaintiff complied with this first step, as evidenced by pages 24-30 (English) and pages 31 – 17. However, Plaintiff did not comply with the plain language of the Additional Protocol because the Central Authority of Ecuador did not complete and return Form C, thereby rendering service deficient.

In any event, the service claimed to have been made on Defendants in this action was insufficient because it failed to comply with the law of Ecuador regarding service of process, and

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<sup>15</sup> Despite the title of the Convention, no formal letter rogatory in the traditional sense is required. Annex to the Additional Protocol Form A (USM 272/272A) serves this purpose. *See* Department of State Circular on the Operation of the Inter-American Service Convention available online at [http://travel.state.gov/law/info/judicial/judicial\\_687.html](http://travel.state.gov/law/info/judicial/judicial_687.html).

<sup>16</sup> *See id.*

the Amended Complaint fell short with respect to both Florida law and the Additional Protocol.

**A. Service Is Insufficient Because the Defendants Were Not Properly Served in Accordance with the Rules Governing Service in Ecuador as Required by the IAC.**

As ordered by the Court, Plaintiff was to execute service on Defendants pursuant to the IAC. Article 10 of the Inter-American Convention mandates that “[l]etters rogatory shall be executed in accordance with the laws and procedural rules of the State of destination.” Ecuador’s rules of procedure governing service of process are contained in the Ecuador’s Code of Civil Procedure.<sup>17</sup> Defendants have furnished the Court, at Exhibit E, both the text of the applicable code provisions and the opinion of an Ecuadorian attorney concerning the application of the code provisions. Pursuant to Fed. R. Civ. P. 44.1, the Court may consider any relevant material or source to determine foreign law, and the materials furnished by Defendants in Exhibit E have been relied upon in similar circumstances. See *Prewit Enterprises, Inc. v. Organization of Petroleum Exporting Countries*, 353 F.3d 916, 924 n.11 (11<sup>th</sup> Cir. 2003) (Austrian Code of Civil Procedure on service of process and attorney expert affidavits relied upon in rejecting service on OPEC at its Austrian headquarters); *Transportes Aereos Pegaso, S.A. de C.V. v. Bell Helicopter Textron, Inc.*, 623 F. Supp.2d 518, 534 (D. Del. 2009) (affidavits from lawyers practicing in the foreign country are a common method of proving foreign law).

**1. Ecuador’s Laws Applicable to Service on Corporations Were Not Followed**

Article 77 of Ecuador’s Code of Civil Procedure provides that service on a business shall be made at the domicile of the corporation or legal entity to a business proprietor, merchant or representative of a business during regular business hours. If the foregoing are not found, an official notice shall be delivered to any assistant or employee of the business. Furthermore, the

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<sup>17</sup> Codico de Procedimiento Civil, Codificacion 11, Registro Oficial Suplemento 58, Titulo 1, Articulos 73, 77, 82 and 93 [Code of Civil Procedure, Art. 73, 77, 82 and 93].

clerk or the server is obligated by the Code to ascertain the truth that it is the respective dwelling or business establishment in order “*to legally make the subpoena in that place.*”<sup>18</sup>

In this instance, COLISA was not domiciled or doing business at the addresses listed on the Summonses and Returns of Subpoenas. COLISA did not have a representative at those addresses. COLISA did not receive the process purported to be made at the two alternate addresses listed in the Returns. However, the process server certified that he made service on COLISA by delivery to a “Shop Clerk” and posting notice. Clearly, the process server did not fulfill his obligation of ascertaining the truth that the two locations in Guayaquil County were the actual registered or legal addresses for COLISA. Because COLISA does not hold offices in either of the two Guayaquil locations, service upon COLISA was in fact not legal under Ecuadorian law.

## **2. Ecuador’s Laws Applicable to Service on Individuals Were Not Followed**

Article 93 of Ecuador’s Code of Civil Procedure requires that every defendant to a lawsuit be personally served with the subpoena. If personal service cannot be performed, Article 93 permits service according to Article 77 by means of three notices on three different days left at the defendant’s dwelling.<sup>19</sup> A defendant’s “dwelling” is a person’s place of abode.<sup>20</sup> Article 77 states that if the person to be subpoenaed is not found, he or she shall be subpoenaed by official notice left at the dwelling of the party to any individual of his or her family or

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<sup>18</sup> Exhibit E, page 5, text of Article 77.

<sup>19</sup> Exhibit E, page 2, text of Article 93.

<sup>20</sup> Exhibit E, page 2, paragraph 2, Concerning Subpoena to an Individual, opinion: “In Ecuadorean law, the word ‘dwelling’ is understood as place of abode.”

employee.<sup>21</sup> The person receiving the notice is required to sign the service of process, and if he doesn't do so, the server shall record the fact that the person did not sign for service.<sup>22</sup>

Here, Mr. Carvajal was not served at his dwelling. In fact, even though the address for Mr. Carvajal is correctly stated on the Summons, the returns of service state that Mr. Carvajal was served by delivery to a "Shop Clerk" and by affixing to the door at the addresses listed on the COLISA Summonses, neither of which is Mr. Carvajal's dwelling. See ¶¶ 16-17, *supra*. Clearly, the process server did not deliver process to a member of Mr. Carvajal's family or employee at his dwelling. And, as stated above, no signature for Mr. Carvajal or a person served in his stead was obtained.

Further evidence of Plaintiff's failure to properly serve the Defendants pursuant to the IAC is that the documentation furnished to the State Court (D 1-2) is incomplete and inaccurate. Ecuador, the Destination State, did not complete and return Form C, the Certificate of Execution (Formulario C). Form C requires the name of the person to whom the documents were delivered and the relationship of the person to the person served. (p. 30 at "B"). The Central Authority for Ecuador did not certify the legitimacy of the service as required by the Convention.

**B. Service Of Process Is Insufficient Because Plaintiff Failed to Attach Necessary Exhibits.**

Even if Defendants were served at an appropriate location and placed on notice of this lawsuit pursuant to the rules governing service of process in Ecuador, service would nevertheless be insufficient because Plaintiffs failed to attach the Exhibits upon which the claims of the Amended Complaint are based upon. Article 8 of the Inter-American Convention requires that

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<sup>21</sup> Exhibit E, page 3, paragraph 3, Concerning the Requirements of a Subpoena to an Individual.

<sup>22</sup> Exhibit E, page 3, Article 77, second paragraph.

the letters rogatory be accompanied by “[a]n authenticated copy of the complaint with its supporting documents, and of other exhibits or rulings that serve as the basis for the measure requested.” Article 3(b) of the Additional Protocol also requires that an “[u]ntranslated copy of the documents attached to the complaint or pleading” accompany the letters rogatory. Similarly, in Florida, a plaintiff must attach all the documents upon which its complaint relies and all of those exhibits are then considered part of the complaint for all purposes. *Franz Tractor Co. v. J.I. Case Co.*, 566 So.2d 524 (2d DCA 1990). This requirement regarding exhibits is more than a ministerial nicety and is given special importance in Florida law. Under Fla R. Civ. P. §1.130(a), all contracts or documents “upon which action may be brought ... shall be incorporated in or attached to the pleadings.” A complaint based on a written instrument, such as in this case, does not state a cause of action until the instrument or an adequate portion thereof, is attached to or incorporated in the complaint. *Samuels v. King Motor Co. of Fort Lauderdale*, 782 So.2d 489 (Fla. 4<sup>th</sup> DCA 2001).

Thus, the attempted service is nevertheless ineffective because the English language Amended Complaint did not have Exhibits A and B attached. Similarly, the Spanish translation of the Amended Complaint does not include Exhibits A and B. *See* FN 9, *supra*. In Plaintiff’s three-count Amended Complaint for Breach of Contract, Unjust Enrichment and Fraud in the Inducement, Exhibits A and B are the sole documents referred to therein. According to the Amended Complaint, the agreement which forms the basis of the three counts is contained within the “Promissory Note,” which is alleged to be attached to the Amended Complaint as “composite Exhibit A.” “Exhibit B” is the alleged evidence of the coverage on which the claim in question is based. Nevertheless, these documents are not contained within the 81-page package filed in the State Court Action as evidence of service in accordance with the IAC.

Clearly, these two exhibits are integral to Plaintiff's claims and, without them, the Amended Complaint is essentially meaningless.

Defendants are unable at this time to fully ascertain the nature of the lawsuit because of the lack of documentation. The meaning of the exhibits to a complaint filed in a Florida court is integral to the defendant's ability to respond to the allegations, and the IAC's requirements that the Complaint must be accompanied by all supporting documents and exhibits are more than any mere technicality. Rather, these requirements go straight to a core due process right. Defendants summoned into Florida courts cannot hope to understand – let alone respond to – the allegations made against them if those allegations are not accompanied by the documents forming the basis of the claims against them. The duty falls squarely on the Plaintiff to follow the State Court Action Order that service be made pursuant to the IAC. This Plaintiff has not fulfilled that duty.

## **VI. CONCLUSION**

This action against the Defendants should be dismissed, or alternatively, the service of process should be quashed, on the grounds that the purported service failed to comply with the requirements of the Inter-American Convention on Letters Rogatory and the Additional Protocol.

WHEREFORE, Defendants respectfully request that the Court enter an order dismissing this action on the basis of insufficiency of service of process or, in the alternative, quashing service of process on the Defendants, and granting such further and other relief as this Court may deem just and equitable.

Date: March 18, 2010

**M.A. HUEY, P.A.**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 18, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

MARY ANN HUEY

**SERVICE LIST**

**Folksamerica Reinsurance Co. n/k/a White Mountain Reinsurance Company of America**

**vs.**

**Constructora Del Litoral, S.A. and Jose Leonardo Carvajal Huerta**

**CASE NO. 1:10-CV-20560-HOEVELER**

**United States District Court, Southern District of Florida**

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