

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

**State of Florida**  
**Office of Financial Regulation,**  
Plaintiff,

Case No.: **50-2021-CA-008718-XXXX-MB**  
**CIVIL DIVISION**

v.  
National Senior Insurance, Inc.  
et. al. including Richard Donoff,  
Defendants.

\_\_\_\_\_ /

**DEFENDANT RICHARD DONOFF'S MOTION FOR RECONSIDERATION OF APPROVAL  
OF SETTLEMENT AND AGREED FINAL ORDER AGAINST DEFENDANT**

Richard Donoff (“Defendant” or “Donoff” ), through his undersigned counsel, does hereby respectfully move this Court to reconsider its approval of the Settlement Agreement on May 30, 2024 and entry of Agreed Final Order Against Defendant (the “Final Order”) entered on August 19, 2024, and in furtherance thereof states as follows:

**Introduction**

1. On July 29, 2024, Donoff filed his Motion to Set Aside Settlement Agreement for Breach of Agreement and Bad Faith (the “Motion”), herein adopted by reference. The present motion for reconsideration asserts, respectfully, that Defendant should have had the opportunity to present his case in a hearing before the court, prior to either the approval of the Settlement Agreement (“the “Agreement”) and the entry of the Final Order.

**Background**

2. On February 26, 2024, the Court appointed Receiver, Daniel J. Stermer and Richard Donoff entered into the Agreement which contained a detailed confidentiality provision. Pursuant

to that provision, other than an acknowledgment of a settlement, all of the terms of the settlement, any documents exchanged, and facts regarding the claims, were not to be disclosed. Moreover, the Agreement states that the confidentiality provision was fundamental to the Agreement, such that without it, there would have been no settlement.

3. Yet, subsequent to the execution of the Agreement, Plaintiff filed a purportedly redacted settlement agreement (the “Redacted Agreement”) with the Court. As set forth in Donoff’s Motion, it appears that the Redacted Agreement was filed pursuant to a clause titled “Conditions of Enforcement of Agreement.”

4. The conditions for enforcement of a settlement agreement are only invoked in the event that there has been a violation of the agreement. See Boca Petroco Inc. v. Petroleum Realty I, LLC, 993 So 2d. 1092 (Fla 4<sup>th</sup> DCA 2008) (By enforcing a contract, it is assumed that the contract has continuing validity and a party is ordered to comply with its terms).

5. In the instant case, Plaintiff erroneously invoked the terms of the enforcement clause by filing the Redacted Agreement when, through that point in time, there had been no violations of the terms of the Agreement by Defendant.

6. In any event, whether the Enforcement Clause was intended to circumvent the Confidentiality Clause or was invoked unnecessarily without there being a violation of the terms of the Agreement, Plaintiff’s filing of the Redacted Agreement was a breach of the Agreement; unwarranted and in bad faith.

7. In addition, the Enforcement Clause requires the financial terms of the Agreement to be redacted. Clearly, the “financial terms” of the settlement encompassed both the amount of the settlement and the damages claimed, giving rise to the settlement. Only the settlement amount was redacted.

8. The filing of the Redacted Agreement constituted a material breach of the Agreement permitting Donoff to terminate the Agreement, in all respects.

9. There can be little doubt that Plaintiff’s Redacted Agreement constituted a material breach, subjecting the Agreement to abrogation. In the case of Guliver Schools, Inc., v. Snay 137 So. 3d 1045 (3<sup>rd</sup> DCA 2014), the court considered a confidentiality clause which, except for attorneys, professionals, and spouse, provided that,

“the existence of terms of the Agreement ... A breach ... will result in disgorgement of the Plaintiff’s portion of the settlement

Payments.” Snay told his college-age daughter of the settlement and that “were happy with the results.” Id. p. 1048. The daughter posted on Facebook that “Mama and Papa won the case against Gulliver. Gulliver is now officially paying for my vacation to Europe this summer, SUCK IT.”

10. The court overturned the lower court’s approval of Snay’s motion to confirm the settlement agreement. In doing so, the Court acknowledged that Snay testified that he knew he needed to tell his daughter something; however, the appellate court found that Snay’s conversation with his daughter that “it was settled and we were happy with the results,” establishes a breach of the provision, the court below should have denied “his motion for enforcement of the agreement” Id. The court noted that Snay violated the agreement by doing exactly what he had promised not to do. His daughter then did precisely what the confidentiality agreement was designed to prevent, advertising to the Gulliver community that Snay had been successful in his age discrimination and retaliation case against the school” Id.

11. The same is true in the instant case. Plaintiff did precisely what the confidentiality clause was intended to prevent, the disclosure of any of the terms of the Agreement.

12. On May 16, 2024, Rose Schindler (“Schindler”), Donoff’s attorney, notified Berger Singerman by e-mail (Exhibit A) of its breach of the confidentiality terms of the settlement agreement, “thereby breaching Richard Donoff’s settlement agreement (See Schindler’s Affidavit, Exhibit B).”

13. On or before May 21, 2024, Schindler further advised Plaintiff’s attorney by e-mail that “Donoff believed that the Plaintiff’s filing of the Redacted Agreement was in violation of the Agreement. In response, Plaintiff’s attorney stated, “we can have the clerk replace the prior agreement [Redacted Agreement] with a fully redacted agreement.” (Exhibit C.)

14. By e-mail dated May 24, 2024, Schindler informed Plaintiff’s attorney that the further redactions were unsatisfactory and that “Richard Donoff will not consent to the settlement agreement. He has hired litigation counsel so please cancel the hearing.” Exhibit C. The hearing which Schindler had requested be canceled was the hearing scheduled for May 30, 2024 seeking the court’s approval of the Agreement.

15. Notwithstanding these advisements to opposing counsel, Plaintiff proceeded with the hearing to approve the Agreement on May 30, 2024.

16. During the May 30, 2024, hearing, the undersigned and Schindler appeared on behalf of Defendant. As the hearing transcript (Exhibit D) shows, Plaintiff's counsel represented to the court that we've "received no written objection to the settlement agreements" and that "With respect to Mr. Donoff, we also filed the redacted – fully redacted agreement and that provides for payment, as well. We would ask that the court approve both of these settlements." Toward the end of the hearing, however, Plaintiff's counsel contradicted himself by stating: "This is the second time he's [Donoff] now tried to rescind the agreement post mediation."

17. Upon the conclusion of the comments by Plaintiff's counsel, the court immediately approved the settlement, at which point the undersigned requested to be heard and received the court's permission. The undersigned stated as follows:

Your Honor, we believe that the Plaintiff breached the settlement agreement. In fact, it is pretty clear on the face of the documents that they breached. This settlement agreement for Mr. Donoff had a very specific confidentiality provision that no terms of the settlement were to be disclosed at all. And you just heard counsel tell you that they filed a redacted settlement agreement.

Well, the question is, what was redacted? Only the settlement amount was redacted, not the allegations of fraud and misappropriation, which should have been, not the amount that they were seeking which was absurd and outrageous.

... These transgressions are very serious with respect to these people and their livelihoods. Mr. Donoff is still in this industry, and allegations of fraud – allegations of fraud, Your Honor, in the financial world are a death bell [nell]. ...

... So, we would like an opportunity to prove that the confidentiality provision has been breached and rescind the settlement agreement with respect to Mr. Donoff.

Thereafter, Schindler represented to the Court as follows:

I did notify Mr. Rich that the settlement was breached and that to cancel this hearing on several occasions, so I don't know why he continued to go forward.

18. Thereupon the Court approved the Agreement but gave leave to the parties to raise the issue of breach at a separate hearing. On the basis that the Court was advised that a material breach terminated the contract and freed Donoff of any obligation thereto, the Court should have held in abeyance its approval of the Agreement, pending that hearing.

19. By letter dated May 31, 2024, Plaintiff's counsel was advised that Donoff had paid the first payment pursuant to the settlement agreement into an attorney escrow account and would continue to make any such payments pending the outcome of Defendant's prospective Motion that Plaintiff had breached Agreement (Exhibit E).

20. On July 29, 2024, Donoff filed the Motion. On August 19, 2024, and again on August 20, 2024 (Exhibit F), Plaintiff's attorney was again advised that the first payment of \$75,000 had been put in escrow pending the issue raised with the Court as to its approval of the Agreement.

21. On August 9, 2024, Plaintiff filed its motion to strike and respond in opposition to the Motion. It also filed "Plaintiff's Notice of Filing Answer, Waiver of Defenses and Consent to Judgment of Defendant Richard Donoff. This pleading was signed on March 26, 2024, as was the Agreement, as well as the Final Order, which was filed with the Court on August 12, 2024. On August 16, 2024, Donoff filed his objection to the Entry of Agreed Final Judgment Against Defendant.

22. It is Donoff's position that the Plaintiff's material and harmful breach terminated the Agreement which obviated any further obligations as to Donoff pursuant to the Agreement; rendering the Consent to Judgment and Agreed Final Order, moot. If this were not the case, Plaintiff would be free to breach the terms of the Agreement without consequence. Plaintiff's breach is particularly troubling since Defendant's Motion alleges that Plaintiff has acted in bad faith throughout the settlement of the case. That Motion explains how facts were fabricated by Plaintiff, legal defenses were summarily dispensed with, and the amount of the purported damages owed by Donoff were not only specious and in bad faith, they were conjured out of whole cloth and without any evidence that Donoff had even sold a single Note Security. Approval of this Agreement would justify the payment of a settlement obtained through intimidation, undue influence, and fraudulent representation of damages; of some \$796,000. That amount is entirely illusory and theoretical, but nevertheless would be claimed by Plaintiff if Donoff dared to litigate which could cost Tens if not Hundreds of Thousands of Dollars.

23. It would be unconscionable for Plaintiff, an agency of the State of Florida, to engage in such offenses and tactics while depriving Donoff of a hearing to present his evidence.

24. Moreover, while settlements are generally preferred by public policy, it would be manifest injustice for the court to act on a pre-existent Consent and Final Order and ignore the serious allegations raised by Donoff as to how those documents were procured.

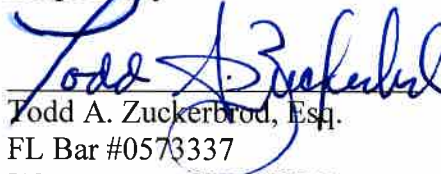
25. Plaintiff's breach is further compounded by the "Receiver's Fourth Report," which, not only references to Donoff's settlement but reports that Donoff's redacted settlement agreement "can be found on the Receiver's website as well as orders entered approving each of the settlements." Based on knowledge and belief, the Receiver's Fourth Report was sent to every investor who invested in Note Securities, including present customers of Donoff. Such information is identifiable to prospective customers through a simple internet search; precisely what the Confidentiality Clause was intended to obviate.

### Conclusion

Therefore, based on the foregoing, Donoff respectfully requests that the approval of the Agreement and Final Order be reconsidered and set aside in favor of a hearing on the merits of his Motion.

Dated: September 4, 2023

Respectfully submitted



Todd A. Zuckerbrod, Esq.

FL Bar #0573337

TODD A. ZUCKERBROD, P.A.

40 SE 5<sup>th</sup> Street, Suite 400

Boca Raton, FL 3342

Telephone: 561.544.8144

Email: [tz@tzbrokerlaw.com](mailto:tz@tzbrokerlaw.com)

Attorney for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on September 4, 2024, the foregoing was filed using the Florida E-Portal Filing System, which will serve a copy of the foregoing to the Plaintiff electronically upon electronic service.

Dated: September 4, 2024

  
Todd A. Zuckerbrod, Esq.

Brian G. Rich,  
Albert Gregory Melchior  
Bernard Charles Carollo Jr.  
Gavin C. Gaukroger  
Kerry L. Burns  
Daniel J. Stermer  
David L. Luikart  
Gary A. Woodfield  
Gavin C. Gaukroger  
George C. Bedell III  
Harris J. Koroglu,  
Ian M. Ross,  
James C. Moon  
Joshua W. Dobin  
Jeffrey H. Sloman  
John Jeremy Truitt  
Bernard Charles Carollo Jr.  
William Leve  
Joshua W. Dobin  
Carey D. Schreiber  
Michael Niles  
Robert W. Pearce  
Scott A. Orth  
Steven Aaron Roth  
Susan B. Yoffee  
Gary A. Woodfield  
Victoria R. Morris

# Exhibit A



## Todd Zuckerbrod

---

**From:** Rose Schindler <Rose.Schindler@gmlaw.com>  
**Sent:** Wednesday, May 29, 2024 4:33 PM  
**To:** Todd Zuckerbrod  
**Subject:** FW: Richard Donoff settlement

See below.



Rose M. Schindler, Esq.  
Of Counsel  
2255 Glades Road  
Suite 400-E  
Boca Raton, FL 33431  
(561) 994-2212 ext. 1809 *office*  
(561) 322-2979 *direct*  
(561) 807-7529 *direct fax*  
[Rose.schindler@gmlaw.com](mailto:Rose.schindler@gmlaw.com)

---

**From:** Rose Schindler  
**Sent:** Thursday, May 16, 2024 3:16 PM  
**To:** Brian Rich <BRich@bergersingerman.com>; Michael J. Niles <MNiles@bergersingerman.com>  
**Cc:** Gavin Gaukroger <ggaukroger@bergersingerman.com>  
**Subject:** RE: Richard Donoff settlement

I advised that Mr. Donoff intends to comply with the settlement. He leaves open his options if the redaction isn't more thorough. Confidentiality was stated to be very important to the settlement.



Rose M. Schindler, Esq.  
Of Counsel  
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(561) 322-2979 *direct*  
(561) 807-7529 *direct fax*  
[Rose.schindler@gmlaw.com](mailto:Rose.schindler@gmlaw.com)

---

**From:** Brian Rich <[BRich@bergersingerman.com](mailto:BRich@bergersingerman.com)>  
**Sent:** Thursday, May 16, 2024 3:14 PM  
**To:** Rose Schindler <[Rose.Schindler@gmlaw.com](mailto:Rose.Schindler@gmlaw.com)>; Michael J. Niles <[MNiles@bergersingerman.com](mailto:MNiles@bergersingerman.com)>  
**Cc:** Gavin Gaukroger <[ggaukroger@bergersingerman.com](mailto:ggaukroger@bergersingerman.com)>  
**Subject:** RE: Richard Donoff settlement

So are you saying that your client doesn't intend to live up to the agreement and wants to litigate? Are you asking us to do something? I am just trying to understand what you are asking and where we are.

Thanks

 **Brian Rich**  
D: (850)521-6725 | M: (786)427-7511  
[bergersingerman.com](mailto:bergersingerman.com) [[bergersingerman.com](mailto:bergersingerman.com)]

---

**From:** Rose Schindler <[Rose.Schindler@gmlaw.com](mailto:Rose.Schindler@gmlaw.com)>  
**Sent:** Thursday, May 16, 2024 3:07 PM  
**To:** Michael J. Niles <[MNiles@bergersingerman.com](mailto:MNiles@bergersingerman.com)>; Brian Rich <[BRich@bergersingerman.com](mailto:BRich@bergersingerman.com)>  
**Cc:** Gavin Gaukroger <[ggaukroger@bergersingerman.com](mailto:ggaukroger@bergersingerman.com)>  
**Subject:** RE: Richard Donoff settlement

[External E-mail]

---

We disagree. The terms of default are part of the financial terms of the settlement. The terms of default should be redacted as well.

**Greenspoon Marder**  LLP  
— CELEBRATING FORTY YEARS TOGETHER

Rose M. Schindler, Esq.  
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(561) 322-2979 *direct*  
(561) 807-7529 *direct fax*  
[Rose.schindler@gmlaw.com](mailto:Rose.schindler@gmlaw.com)

---


**From:** Michael J. Niles <[MNiles@bergersingerman.com](mailto:MNiles@bergersingerman.com)>  
**Sent:** Thursday, May 16, 2024 3:04 PM  
**To:** Rose Schindler <[Rose.Schindler@gmlaw.com](mailto:Rose.Schindler@gmlaw.com)>; Brian Rich <[BRich@bergersingerman.com](mailto:BRich@bergersingerman.com)>  
**Cc:** Gavin Gaukroger <[ggaukroger@bergersingerman.com](mailto:ggaukroger@bergersingerman.com)>  
**Subject:** RE: Richard Donoff settlement

Rose,

Thank you for your email and we appreciate you confirming that Mr. Donoff intends to honor his commitment. We disagree that that the Receiver is in breach of the Settlement Agreement. Paragraph 8 of the Settlement Agreement states:

8. Conditions of Enforcement of Agreement: The Court shall enter an order approving this Agreement, and Donoff shall cooperate with the Receiver and his attorneys' efforts to obtain Court approval of this Agreement. The Receiver will file a copy of this Agreement with the financial terms of the settlement redacted with the Court. The Receiver shall provide the Court, under seal, an unredacted version of the Agreement.

Pursuant to such, we redacted the financial terms of the settlement in the Motion and Settlement Agreement filed with the Court. The amount of the demand against Mr. Donoff identified in the Motion to Approve the Settlement was not a part of the financial terms of the settlement and the Motion filed was pursuant to and required by the Order Appointing Receiver. The Receiver intends to continuing honoring the terms of the Settlement Agreement and his duties under the Order Appointing Receiver.

 **Michael J Niles**  
D: (850)521-6736 | M: (850)270-1448  
[bergersingerman.com](http://bergersingerman.com) [[bergersingerman.com](http://bergersingerman.com)]

---

**From:** Rose Schindler <[Rose.Schindler@gmlaw.com](mailto:Rose.Schindler@gmlaw.com)>  
**Sent:** Thursday, May 16, 2024 2:01 PM  
**To:** Michael J. Niles <[MNiles@bergersingerman.com](mailto:MNiles@bergersingerman.com)>; Brian Rich <[BRich@bergersingerman.com](mailto:BRich@bergersingerman.com)>  
**Subject:** Richard Donoff settlement

[External E-mail]

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Please note that after consultation with Richard Donoff, we feel you are in breach of the settlement agreement by your failure to redact all of the financial information which constitutes an important part of the settlement agreement as it concerns confidentiality. He intends to honor his commitment but expects you to do the same.



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Unless specifically indicated otherwise, any discussion of tax issues contained in this e-mail, including any attachments, is not, and is not intended to be, "written advice" as defined in Section 10.37 of Treasury Department Circular 230.

A portion of our practice involves the collection of debt and any information you provide will be used for that purpose if we are attempting to collect a debt from you.

# Exhibit B

August 20, 2024

## AFFIDAVIT OF ROSE M. SCHINDLER, ESQ.

1. I am a securities attorney with Greenspoon Marder LLP.
2. I represented Richard Donoff in the mediation of this matter.
3. I represented to Richard Donoff that he had a solid chance of winning if he went to court given the legal and factual bases in his favor. If he went to mediation, he could avoid the expenses of litigation and benefit from the confidentiality of the mediation.
4. Donoff elected to participate in the mediation.
5. Richard Donoff executed the settlement agreement with the material confidentiality provisions below.
6. Under No. 12 of the Settlement Agreement, confidentiality was the underlying basis for the agreement of the Settlement. No. 12 cites "The Parties agree that, other than acknowledging in response to any inquiry the fact that the claims have been settled, the Parties shall not disclose or discuss ....*any* (emphasis added) of the terms of the settlement of the claim(s) , and/or the facts regarding the claim(s), including, but not limited to the amount of any payment...made or to be made to the Receiver...

"The Parties acknowledge and agree that this confidentiality clause is an important essential component of this Agreement, and that but for this clause, the Parties would not have resolved the claim(s) or entered into this Agreement. In the event

any of the Parties breaches or attempts to breach this confidentiality, the breaching Party acknowledges that it may be liable for other claims and damages.”

7. It is important to acknowledge that Berger Singerman created and approved this negotiated settlement agreement.
8. Richard Donoff was extremely upset to learn of the filing with the Court by Berger Singerman of a settlement agreement which disclosed financial and other terms in violation of the settlement agreement.
9. By email on May 16, 2024, I notified Berger Singerman of its breach of the confidentiality terms of the settlement agreement, thereby breaching the Richard Donoff settlement agreement.
10. Berger Singerman offered to modify its filing by making further redactions to the filing. These revisions did not cure the breach in any way.
11. On my advice, Mr. Donoff hired a litigation attorney to redress the breach of the settlement agreement with the Court.
12. The next day, Mr. Donoff placed the first payment of the settlement agreement into an escrow account.
13. I notified Berger Singerman that the funds had been segregated and placed into an escrow account. Berger Singerman argued that placing the funds into an escrow account did not meet the terms of the settlement agreement which had already been breached by them. I also requested then that the settlement agreement be filed under seal.
14. I appeared in a court hearing with Mr. Zuckerbrod who argued at the hearing that Berger Singerman had breached the settlement agreement.
15. Thereafter, Berger Singerman filed their motion to approve the settlement agreement despite being aware that Mr. Donoff was contesting the settlement agreement due to the breach of the confidentiality term.

August 20, 2024

Page No. 3

16. In response to the Court's Direction, an objection to the Settlement Agreement was filed by Mr. Zuckerbrod, Esq.
  
17. I am not aware that any hearing for the finalization of the settlement agreement was set after Berger Singerman filed its request for approval of the breached settlement agreement.
  
18. Although I identified myself as co-counsel for Richard Donoff at said hearing, I was not made aware of the hearing to finalize the settlement agreement, notwithstanding that I had received other pleadings.
  
19. I note that Mr. Zuckerbrod had argued that "we believe that the Plaintiffs had breached the settlement agreement" and that a five-minute UMC was the appropriate time and place for a hearing. Upon information and belief, no hearing had been set to hear Mr. Zuckerbrod's motion or to finalize the settlement agreement.

Further, Affiant sayeth not.

GREENSPOON MARDER LLP

A handwritten signature in cursive script, appearing to read "Rose A. Schindler".

Rose Schindler, Esq.



# Exhibit C

## Todd Zuckerbrod

---

**From:** Rose Schindler <Rose.Schindler@gmlaw.com>  
**Sent:** Friday, May 24, 2024 5:41 PM  
**To:** Todd Zuckerbrod  
**Subject:** FW: Donoff

Please see below.



Rose M. Schindler, Esq.  
Of Counsel  
2255 Glades Road  
Suite 400-E  
Boca Raton, FL 33431  
(561) 994-2212 ext. 1809 *office*  
(561) 322-2979 *direct*  
(561) 807-7529 *direct fax*  
[Rose.schindler@gmlaw.com](mailto:Rose.schindler@gmlaw.com)

**From:** Brian Rich <BRich@bergersingerman.com>  
**Sent:** Friday, May 24, 2024 5:40 PM  
**To:** Rose Schindler <Rose.Schindler@gmlaw.com>  
**Cc:** Gavin Gaukroger <ggaukroger@bergersingerman.com>; Michael J. Niles <MNiles@bergersingerman.com>  
**Subject:** Re: Donoff

Have his litigation counsel contact us or tell us who it is. There was no breach -except by him.

Brian G Rich  
Berger Singerman LLP

850-521-6725 office  
786-427-7511 cell

On May 24, 2024, at 5:27 PM, Rose Schindler <[Rose.Schindler@gmlaw.com](mailto:Rose.Schindler@gmlaw.com)> wrote:

[External E-mail]

---

He believes you breached the agreement.



Rose M. Schindler, Esq.  
Of Counsel  
2255 Glades Road  
Suite 400-E  
Boca Raton, FL 33431  
(561) 994-2212 ext. 1809 *office*  
(561) 322-2979 *direct*  
(561) 807-7529 *direct fax*  
[Rose.schindler@gmlaw.com](mailto:Rose.schindler@gmlaw.com)

**From:** Brian Rich <[BRich@bergersingerman.com](mailto:BRich@bergersingerman.com)>  
**Sent:** Friday, May 24, 2024 5:25 PM  
**To:** Rose Schindler <[Rose.Schindler@gmlaw.com](mailto:Rose.Schindler@gmlaw.com)>  
**Cc:** Michael J. Niles <[MNiles@bergersingerman.com](mailto:MNiles@bergersingerman.com)>; Gavin Gaukroger <[ggaukroger@bergersingerman.com](mailto:ggaukroger@bergersingerman.com)>  
**Subject:** Re: Donoff

Rose. He already signed. A binding agreement and if we seek to enforce we will seek fees. We will not cancel the hearing. He can show up and tell the judge why he isn't complying.

Brian G Rich  
Berger Singerman LLP  
  
850-521-6725 office  
786-427-7511 cell

On May 24, 2024, at 5:15 PM, Rose Schindler <[Rose.Schindler@gmlaw.com](mailto:Rose.Schindler@gmlaw.com)> wrote:

[External E-mail]

---

Brian, Richard Donoff will not consent to the settlement agreement. He has hired a litigation counsel so please cancel the hearing.

<image002.png>  
Rose M. Schindler, Esq.  
Of Counsel  
2255 Glades Road  
Suite 400-E

Boca Raton, FL 33431  
(561) 994-2212 ext. 1809 *office*  
(561) 322-2979 *direct*  
(561) 807-7529 *direct fax*  
[Rose.schindler@gmlaw.com](mailto:Rose.schindler@gmlaw.com)

**From:** Brian Rich <[BRich@bergersingerman.com](mailto:BRich@bergersingerman.com)>  
**Sent:** Tuesday, May 21, 2024 5:37 PM  
**To:** Rose Schindler <[Rose.Schindler@gmlaw.com](mailto:Rose.Schindler@gmlaw.com)>  
**Cc:** Michael J. Niles <[MNiles@bergersingerman.com](mailto:MNiles@bergersingerman.com)>; Gavin Gaukroger <[ggaukroger@bergersingerman.com](mailto:ggaukroger@bergersingerman.com)>  
**Subject:** RE: Donoff

Thanks. We will get the hearing set and file as set forth below.

<image003.png> **Brian Rich**  
D: (850)521-6725 | M: (786)427-7511  
[bergersingerman.com](http://bergersingerman.com)  
[\[bergersingerman.com\]](http://bergersingerman.com)

**From:** Rose Schindler <[Rose.Schindler@gmlaw.com](mailto:Rose.Schindler@gmlaw.com)>  
**Sent:** Tuesday, May 21, 2024 5:31 PM  
**To:** Brian Rich <[BRich@bergersingerman.com](mailto:BRich@bergersingerman.com)>  
**Cc:** Michael J. Niles <[MNiles@bergersingerman.com](mailto:MNiles@bergersingerman.com)>; Gavin Gaukroger <[ggaukroger@bergersingerman.com](mailto:ggaukroger@bergersingerman.com)>  
**Subject:** Re: Donoff

[External E-mail]

---

This date also works for me.

Rose M. Schindler, Esq.

Sent from my iPhone

On May 21, 2024, at 5:29 PM, Rose Schindler <[Rose.Schindler@gmlaw.com](mailto:Rose.Schindler@gmlaw.com)> wrote:

Thank you. This is acceptable.

Rose M. Schindler, Esq.  
Sent from my iPhone

On May 21, 2024, at 4:48 PM, Brian Rich <[BRich@bergersingerman.com](mailto:BRich@bergersingerman.com)> wrote:

Rose:

We will announce at tomorrow's hearing that we aren't going forward with the Motion as to Donoff based upon your unavailability. The next available date is May 30. Please advise if that date works for you ASAP.

Additionally, based upon the Order entered today by the Court, we can have the clerk replace the prior agreement, with a fully redacted agreement. While we believe that that is unnecessary and that no breach has occurred, based upon your request we will move forward in that regard. Please advise if that addresses any concerns your client may have.

<image001.png>

**Brian Rich**  
**Berger Singerman** *Florida's Business Law Firm*  
313 N Monroe Street | Suite 301 | Tallahassee, FL 32301  
D: (850)521-6725 | M: (786)427-7511  
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<image003.png>

[[linkedin.com](http://linkedin.com)]

<image005.png>

[[twitter.com](http://twitter.com)]

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# Exhibit D

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IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY  
STATE OF FLORIDA

CASE NO. 50-2021-CA-008718-XXXX-MB

STATE OF FLORIDA,	)
OFFICE OF FINANCIAL	)
REGULATION,	)
	)
Plaintiff,	)
vs.	)
	)
NATIONAL SENIOR INSURANCE,	)
INC., D/B/A SEEMAN HOLTZ,	)
ET AL.,	)
	)
Defendants,	)
	)
THE ESTATE OF ERIC CHARLES	)
HOLTZ, ET AL.,	)
	)
Relief Defendants.	)
<hr/>	

TRANSCRIPT OF PROCEEDINGS

THIS CAUSE came on for hearing  
before the HONORABLE BRADLEY HARPER, Judge of the above  
court, remotely via Zoom, beginning at the hour of 9:02  
o'clock a.m. on the 30th day of May, 2024.

JOB NO. : 6725629



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THE APPEARANCES were as follows:  
(All appearances by Zoom)

FOR DEFENDANT : TODD A. ZUCKERBROD, P.A.  
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brich@bergersingerman.com  
BY: BRIAN G. RICH, ESQUIRE

ALSO PRESENT: DANIEL J. STERMER, ESQUIRE  
Receiver

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P R O C E E D I N G S

- - -

THE COURT: State of Florida, Office of  
Financial Regulation versus Seeman Holtz.

MR. RICH: Good morning, Your Honor. This is  
Brian Rich from Berger Singerman on behalf of  
Daniel Stermer, the receiver. Mr. Stermer is also  
on the line.

MR. ZUCKERBROD: Good morning, Your Honor.  
This is Todd Zuckerbrod on behalf of defendant. I  
believe codefendant Rose Schindler is also on.

THE COURT: All right. Good morning to you  
all.

Just a matter of note, if you ever want to set  
these on the same day, I would be happy to  
accommodate that but you've been on consecutive  
days. But you may proceed.

MR. RICH: Thank you, Judge.

Judge, there are two motions today. These are  
settlements of two clawback actions against the  
advisers for certain of the receivership entities.  
Pursuant to the procedures, Judge, we filed  
redacted settlement agreements with the motion and  
then we had filed unredacted or provided unredacted

1 copies to the court.

2 We did upload orders with respect to these  
3 settlement agreements and Your Honor, as previously  
4 occurred, entered the orders approving these two  
5 settlements.

6 We are here today. We've received no written  
7 objection to the settlement agreements.

8 With respect to the first one, Mr. Hewling  
9 (phonetic), he participated in mediation. He  
10 provided detailed financial disclosures with  
11 respect to his current financial situation. Based  
12 upon that, we entered into the settlement agreement  
13 for the amounts as set forth.

14 With respect to Mr. Donoff, we also filed the  
15 redacted -- the fully redacted agreement and that  
16 provides for payment as well. We would ask that  
17 the court approve both of those settlements.

18 THE COURT: All right. The motion to approve  
19 settlement is granted.

20 MR. ZUCKERBROD: I'm sorry, Your Honor, may I  
21 be heard?

22 THE COURT: Absolutely.

23 MR. ZUCKERBROD: Your Honor, we believe that  
24 the plaintiff breached the settlement agreement.  
25 In fact, it's pretty clear on the face of the

1 documents that they breached.

2 This settlement agreement for Mr. Donoff had a  
3 very specific confidentiality provision that no  
4 terms of the settlement were to be disclosed at  
5 all. And you've just heard counsel tell you that  
6 they filed a redacted settlement agreement.

7 Well, the question is, what was redacted?  
8 Only the settlement amount was redacted, not the  
9 allegations of fraud and misappropriation which  
10 should have been, not the amount that they were  
11 seeking which was absurd and outrageous.

12 This has been violated in every way you can  
13 imagine. In fact, if they had filed an unredacted  
14 settlement agreement with the court, they would  
15 have had no reason to be filing a, quote, unquote,  
16 redacted settlement agreement.

17 I don't think that a five-minute UMC is the  
18 appropriate time or place for us to be able to make  
19 a case that the receiver breached the settlement  
20 agreement and it's clear on the face of the  
21 document. In fact, the document says that all of  
22 the terms shall be maintained on a confidential  
23 basis. And their pleading says certain of the  
24 terms shall be maintained on a confidential basis.

25 In addition, Your Honor, they include the

1 claim that reflects all of the financial  
2 information, which to me is improper because you're  
3 agreeing to maintain this on a confidential basis,  
4 yet you're filing it with things that are to be  
5 maintained on a confidential basis and just putting  
6 it in the court.

7 These transgressions are very serious with  
8 respect to these people and their livelihood.  
9 Mr. Donoff is still in this industry and  
10 allegations of fraud -- allegations of fraud, Your  
11 Honor, in the financial world are a death bell.  
12 And for them to have included them is wholly  
13 improper.

14 And they spell out the obligations along with  
15 respect to maintaining confidential information in  
16 their request to approve the confidentiality of  
17 this and they violated every term of it.

18 So we would like an opportunity to prove that  
19 the confidentiality provision has been breached and  
20 rescind the settlement agreement with respect to  
21 Mr. Donoff.

22 I happen to represent Mr. Hewling as well.  
23 They breached the confidentiality agreement with  
24 respect to Mr. Hewling. He's not looking to  
25 withdraw the settlement but he may be looking for

1 sanctions as a result of those breaches.

2 You can laugh, sir, but that's the law.

3 THE COURT: All right. Would you like to  
4 respond?

5 MR. RICH: Yes, Judge. And I was clearing my  
6 throat.

7 Your Honor, the receiver disputes that there  
8 was any breach of the agreement. The agreement  
9 called for the filing of the settlement terms, the  
10 payment amount to be due under the settlement  
11 agreement, as redacted. In fact, with respect to  
12 Mr. Donoff, the entire agreement has been filed as  
13 redacted.

14 The settlement agreements as attached to the  
15 motion are effective as of the date that they were  
16 executed. Mr. Donoff agreed to cooperate in the  
17 approval of the settlement agreement.

18 This is the second time that he's now tried to  
19 rescind the agreement post mediation.

20 We have an email confirmation from his counsel  
21 confirming that the filing of the redacted  
22 agreement satisfies any concerns that they may have  
23 with respect to any alleged breaches.

24 We would suggest, Judge, that the court  
25 approve the settlement. If they think there is any

1 breach, they can file a motion to enforce the  
2 agreement. If they fail to pay, we will likewise  
3 file a motion to approve the settlement agreement.

4 But the settlement agreement as attached,  
5 Judge, is effective as of the date that it was  
6 signed. There is no ability to rescind the  
7 agreement. We have complied with the terms of the  
8 agreement and ask that the court approve it.

9 THE COURT: All right. Thank you to both  
10 sides.

11 Does anyone else wish to be heard?

12 I see somebody talking but I can't hear them.

13 MS. SCHINDLER: Okay. Can you hear me now?

14 THE COURT: Yes. What is your name, ma'am?

15 MS. SCHINDLER: My name is Rose Schindler and  
16 I'm appearing on behalf of Rich Donoff as  
17 co-counsel to Mr. Zuckerbrod.

18 I did notify Mr. Rich that the settlement was  
19 breached and that to cancel this hearing on several  
20 occasions, so I don't know why he continued to go  
21 forward.

22 MR. RICH: Judge, if I may respond to that  
23 briefly. We asked what the breaches were. We  
24 asked them to have litigation counsel contact us  
25 and we advised them that we intended to go forward

1 with the motion as the settlement agreement is  
2 effective as of the date that it was signed.

3 MR. ZUCKERBROD: I'm not sure that's the  
4 reason to go forward with this, Your Honor, that's  
5 just an excuse. Counsel just told you that they  
6 were informed that there was a breach -- pardon?

7 THE COURT: Everybody gets an opportunity to  
8 be heard.

9 MR. ZUCKERBROD: I'm sorry.

10 THE COURT: He has replied and now I'm going  
11 to do my job which is to rule.

12 The court has reviewed the motions. I've  
13 heard your arguments.

14 The court's inquiry and gaze at this point is  
15 limited to determining the appropriateness of  
16 approving the settlement agreement that has already  
17 been reached by the parties and that's a different  
18 inquiry than determining whether or not the  
19 agreement that the parties have reached has been  
20 breached in some manner. So the motion to approve  
21 the settlement is granted.

22 As it relates to the allegations that one or  
23 either party has breached the settlement agreement  
24 that the parties entered into, you all will have to  
25 raise those issues and set them for hearing at a



1 later date.

2 MR. RICH: Thank you, Your Honor.

3 MR. ZUCKERBROD: Thank you.

4 THE COURT: You all have a good day.

5 (The hearing was concluded 9:11 a.m.)

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CERTIFICATE OF REPORTER

I, Kimberly Iglewski, Court Reporter, in and for the State of Florida at large, do hereby certify that I was authorized to and did report the foregoing proceedings, and that the transcript, pages 1 through 10 is a true and correct record of the proceedings to the best of my ability.

Done and dated this 8th day of August, 2024 at Martin County, Florida.



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Kimberly Iglewski  
Court Reporter

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# Exhibit E





# Todd A. Zuckerbrod, P.A.

May 31, 2024

VIA EMAIL

Brian G. Rich, Esq.  
Berger Singerman LLP  
525 Okeechobee Boulevard, Suite 1250  
West Palm Beach, FL 33401  
[brich@bergersingerman.com](mailto:brich@bergersingerman.com)

**Re: State of Florida (OFR) v. National Senior Insurance, Inc. et al., Case No.: 50-2021-CA-008718-XXXX-MB**

Dear Mr. Rich,

Please be advised that Mr. Donoff has remitted the first payment pursuant to his settlement agreement with Plaintiff, to an attorney escrow account and will continue to remit such settlement payments in this manner pending the outcome of his motion that Plaintiff breached the terms of the settlement agreement, which shall be filed with the Court on short order.

Very truly yours,



Todd A. Zuckerbrod, Esq.

c.c.: Rose M. Schindler,  
Michael J. Niles,  
Gavin Gaukroger

# Exhibit F

## Todd Zuckerbrod

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**From:** Todd Zuckerbrod  
**Sent:** Tuesday, August 20, 2024 5:24 PM  
**To:** Brian Rich; Rose Schindler  
**Cc:** Michael J. Niles; Gavin Gaukroger; Daniel J. Stermer  
**Subject:** RE: Donoff

Brian: As you note in your e-mail yesterday, August 19, 2024, you were advised that Donoff has set aside the first payment (\$75,000) due at this time, under the settlement agreement. I intend to take issue with the Court's approval of the settlement. It is Donoff's position that by paying the current amount due under the settlement agreement into escrow, he is legally protected from owing anything other than the settlement amount, in the event that the court ultimately finds the settlement agreement is legally binding. Further, I believe that under the present circumstances, any effort to seek to collect against Donoff at this time would be additional evidence of bad faith.

Separately, please send me the correspondence which you purport put myself and Rose Schindler, Donoff's attorney's, on notice of the scheduling of the hearing upon which the court entered the order to finalize the settlement.

Todd



Todd A. Zuckerbrod, Esq.  
*Admitted in FL and NY*

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**From:** Brian Rich <BRich@bergersingerman.com>  
**Sent:** Monday, August 19, 2024 2:04 PM  
**To:** Rose Schindler <Rose.Schindler@gmlaw.com>; Todd Zuckerbrod <tz@tzbrokerlaw.com>  
**Cc:** Michael J. Niles <MNiles@bergersingerman.com>; Gavin Gaukroger <ggaukroger@bergersingerman.com>; Daniel J. Stermer <DStermer@DSIConsulting.com>  
**Subject:** Donoff

Rose and Todd:

As you see the Judge entered the Judgment against Mr. Donoff consistent with the approved Settlement Agreement.