

IN THE CIRCUIT COURT OF THE 7TH JUDICIAL CIRCUIT, IN AND FOR  
ST. JOHNS COUNTY, FLORIDA

JEFFREY A. HOWARD, as Personal  
Representative of the Estate of RENEE  
BOLING HOWARD and STACIA RAYBON,

CASE NO. CA06-680-55

Plaintiff,

v.

CHOICE HOTELS INTERNATIONAL, INC.  
a foreign corporation and R.S. and R.S., INC.  
d/b/a COMFORT INN, a Florida corporation,

Defendants.

ESSEX INSURANCE COMPANY,

Intervenor-Plaintiff,

v.

JEFFREY A. HOWARD, as Personal  
Representative of the Estate of RENEE  
BOLING HOWARD and STACIA RAYBON,  
CHOICE HOTELS INTERNATIONAL, INC.  
a foreign corporation and R.S. and R.S., INC.  
d/b/a COMFORT INN, a Florida corporation,

Intervenor-

Defendants.

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**AFFIDAVIT IN SUPPORT OF INTERVENOR-PLAINTIFF ESSEX  
INSURANCE COMPANY'S AMENDED MOTION FOR SUMMARY JUDGMENT**

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STATE OF FLORIDA        )  
                                  )  
COUNTY OF LEON        )

BEFORE ME, the undersigned authority, personally appeared, Gary D. Pullen, who, after being duly sworn, deposes and states:

1. I am over eighteen (18) years of age.
2. I am not a party to the above-captioned action.
3. I have personal knowledge of the facts contained in this affidavit and, if called

upon as a witness, could testify competently thereto.

4. I am the Executive Director of the Florida Surplus Lines Service Office (FSLSO) and have served in this capacity since the FSLSO was created in 1998. As Executive Director, I have responsibility for the operations of the FSLSO in accordance with Section 626.921, Florida Statutes.

5. My business address is 1441 Maclay Commerce Drive, Suite 200, Tallahassee, Florida 32312.

6. As Executive Director of the FSLSO, I am very familiar with the laws and regulations governing surplus lines carriers and their agents in the State of Florida.

7. The Florida Surplus Lines Service Office (FSLSO) is a nonprofit association created by the Florida Legislature pursuant to section 626.921, Florida Statutes.

8. Section 626.921(1), Florida Statutes, explains the purpose of the FSLSO:

There is hereby created a nonprofit association to be known as the Florida Surplus Lines Service Office. The Legislature hereby finds and declares that the establishment of a surplus lines self-regulating organization is necessary to establish a system that will permit better access by consumers to approved unlicensed insurers. Accordingly, the Legislature declares that this section shall be liberally construed and applied to promote its underlying purposes, which will protect consumers seeking insurance in this state, permit surplus lines insurance to be placed with approved surplus lines insurers, establish a self-regulating organization which will promote and permit orderly access to surplus lines insurance in this state, enhance the number and types of insurance products available to consumers in this state, provide a source of advice and counsel for the benefit of consumers, surplus lines agents, insurers, and government agencies concerning the operation of the surplus lines insurance market, and protect the revenues of this state.

9. The FLSO has never required, and to my knowledge, the Florida Office of Insurance Regulation has never required, surplus lines insurers to comply with section 627.410, Florida Statutes.

10. Section 627.410 provides, in pertinent part:

(1) No basic insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, or group certificates issued under a master contract delivered in this state, or printed rider or endorsement form or form of renewal certificate, shall be delivered or issued for delivery in this state, unless the form has been filed with the office by or in behalf of the insurer which proposes to use such form and has been approved by the office. This provision does not apply to surety bonds or to policies, riders, endorsements, or forms of unique character which are designed for and used with relation to insurance upon a particular subject (other than as to health insurance), or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or health insurance policies and are used at the request of the individual policyholder, contract holder, or certificateholder. As to group insurance policies effectuated and delivered outside this state but covering persons resident in this state, the group certificates to be delivered or issued for delivery in this state shall be filed with the office for information purposes only.

11. I have reviewed the Florida Supreme Court's decision in *Essex Insurance Co. v. Zota*, 985 So. 2d 1036 (Fla. 2008).

12. The FLSO does not intend to conduct a review of forms filed by surplus lines carriers pursuant to section 627.410, Florida Statutes. Section 627.410 requires review of forms by the Office of Insurance Regulation but has historically only been applied to admitted carriers. To my knowledge, surplus lines insurers have never filed forms pursuant to section 627.410. FLSO has no authority to conduct form review pursuant to section 627.410, Florida Statutes.

13. To my knowledge, the Florida Office of Insurance Regulation also does not intend to require surplus lines carriers to file forms pursuant to section 627.410, Florida Statutes even after the *Zota* decision.

14. Chapter 626, Part VIII, Florida Statutes specifically regulates surplus lines insurers. Sections 626.913 - 626.937 are known as the "Surplus Lines Law."

15. The Surplus Lines Law contains a specific provision concerning the filing of a policy or a certificate by a surplus lines agent and renders the general provision found in section 627.410 inapplicable.

16. Section 626.923, Florida Statutes, which is entitled "Filing copy of policy or certificate," provides:

A surplus lines agent shall, within 30 days after the date of a request by the department or the Florida Surplus Lines Service Office, furnish an exact copy of any and all requested policies, including applications, certificates, cover notes, or other forms of confirmation of insurance coverage or any substitutions thereof or endorsements thereto. The department or the Florida Surplus Lines Service Office may also request and the agent shall furnish, within 30 days after the date of the request, the agent's memorandum as to the substance of any change represented by a substitute certificate, cover note, other form of confirmation of insurance coverage, or endorsement as compared with the coverage as originally placed or issued.

12. Section 626.923 permits the FSLSO or the Department of Financial Services to obtain policies. As part of compliance reviews, the FSLSO does review agent policy files to verify the accuracy and completeness of the policy information reported to the office but does not conduct a form review.

Affiant further sayeth naught.

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**Gary D. Pullen**  
**Executive Director**  
Florida Surplus Lines Service Office

The foregoing instrument was acknowledged before me this \_\_\_\_ day of, September 2008, by \_\_\_\_\_ who is either: personally known to me [circle if applicable] or produced Florida Driver's License No. \_\_\_\_\_ which confirmed her/his identity.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Name; Commission No.; Commission expiration (typed, printed or stamped)