PETITION APPENDIX
Case No._____
[BROWN v CPIC]
[USCA11 Case: 20-11607]
Appeal from the United States District Court for the Middle District of Florida
[D.C. No. 8:19-cv-01951-CEH-SPF]

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G. Affidavit All Appendix items are actual and true copies of the Originals [**Pg 163-164**]

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A. Eleventh Circuit Refusal for Rehearing April 29, 2021

04/29/2021
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ROGER BROWN,
Plaintiff - Appellant,
versus
CITIZENS PROPERTY INSURANCE CORPORATION,
UNKNOWN EMPLOYEES OF CITIZENS PROPERTY INSURANCE CORPORATION,
Defendants - Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ON PETITION(S) FOR REHEARING AND
PETITION(S) FOR REHEARING EN BANC

BEFORE: WILSON, ROSENBAUM, and GRANT, Circuit Judges.
PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en

banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)
ORD-46

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B. Eleventh Circuit Order Affirming District Court CPIC Eleventh Amendment Immunity February 4, 2021

[DO NOT PUBLISH]
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-11607 Non-Argument Calendar

D.C. Docket No. 8:19-cv-01951-CEH-SPF
ROGER BROWN, Plaintiff-Appellant, versus
CITIZENS PROPERTY INSURANCE CORPORATION, UNKNOWN EMPLOYEES OF CITIZENS PROPERTY INSURANCE CORPORATION,
Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Florida _____
(February 4, 2021)

Before WILSON, ROSENBAUM, and GRANT, Circuit Judges.
PER CURIAM:
USCA11 Case: 20-11607 Date Filed: 02/04/2021 Page: 1 of 7

Roger Brown filed an action against Citizens Property Insurance Corporation, alleging various state law claims connected to a settlement agreement. The district court dismissed the action when it found that the corporation was an arm of the state. Finding no error in the district court's holding, we affirm.

I.

Citizens Property Insurance Corporation (CPIC) was established by the Florida legislature to provide "affordable property insurance." Fla. Stat. § 627.351(6)(a)1. And the Florida legislature further described CPIC as "a government entity that is an integral part of the state, and that is not a private insurance company." Id. That is the entity which Brown now sues.

In 2011, Brown co-owned property in Clearwater, Florida. The trouble was that his property was adjacent to a designated sinkhole property. So he submitted a claim to his property's insurer, CPIC. His claim was disputed, but the ensuing litigation was settled in 2014. That same year, Brown's property was foreclosed, with the final judgment of foreclosure assigned to the Federal National Mortgage Association (FNMA).

CPIC wrote a check for about half the settlement amount, made jointly to Brown and FNMA. Because Brown had not dealt with FNMA before, he sought to get it reissued in his name only. But each time Brown demanded payment, CPIC continued to issue joint checks. Eventually Brown had enough, and he

filed this action in federal district court against CPIC and "unknown employees" of that corporation. Brown's amended complaint alleges breach of contract, conversion, unjust enrichment, intentional breach of fiduciary duty, and intentional infliction of severe emotional distress.

CPIC filed a motion to dismiss for lack of subject matter jurisdiction, citing Eleventh Amendment immunity. In response, Brown argued that Congress can abrogate sovereign immunity, that he could still sue under Ex parte Young, that Florida had waived its immunity, and that CPIC is not an arm of the state. He also filed a motion to compel CPIC to answer interrogatories and produce documents, as well as a motion to compel discovery. Both were denied by the district court because "the discovery requests at issue" were "not relevant to a determination of the Court's jurisdiction." And ultimately, the district court agreed with CPIC that the Eleventh Amendment blocked subject matter jurisdiction. More specifically, the court noted the language of the state statute, and that "courts regularly recognize [CPIC]'s status as a state government entity." It also found that Florida never explicitly waived CPIC's "immunity from suit in federal court." And the court found that the "unknown employees" were not identified or served, and that therefore their inclusion was "not a barrier to dismissal of" the action. So the case was dismissed, and Brown now appeals.

II.

We review de novo the district court's ruling on Eleventh Amendment immunity. Pellitteri v. Prine, 776 F.3d 777, 779 (11th Cir. 2015).

III.

A.

As to CPIC itself, Brown argues that it is not an "arm of the state." The district court found otherwise, and Brown has given us no reason to find that its decision was error. Because we agree with the district court, we affirm.

"Eleventh Amendment immunity bars suits by private individuals in federal court against a state unless the state has consented to be sued or has waived its immunity or Congress has abrogated the states' immunity." Nichols v. Alabama State Bar, 815 F.3d 726, 731 (11th Cir. 2016). That immunity is available "only to states and arms of the states." Walker v. Jefferson Cnty. Bd. of Educ., 771 F.3d 748, 751 (11th Cir. 2014) (internal quotation marks omitted). Whether an entity is an arm of the state is determined based on four factors: "(1) how the state law defines the entity; (2) the degree of state control over the entity; (3) where the entity derives its funds; and (4) who is responsible for judgments against the entity." Nichols, 815 F.3d at 732.

The first two factors weigh heavily in favor of finding that CPIC is an arm of the state. For the first factor, as mentioned before, the Florida legislature defined CPIC as "a government entity," and specifically noted that it was "not a private insurance company." Fla. Stat. § 627.351(6)(a)1. As for the second factor,

CPIC operates pursuant to a plan "approved by order of the Financial Services Commission," which is "subject to continuous review." Fla. Stat. § 627.351(6)(a)2. Further, the commission "may, by order, withdraw approval of all or part of a plan if the commission determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan." Id. The Financial Services Commission, in turn, is composed of "the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture." Fla. Stat. § 20.121(3). Brown does not dispute these factors beyond conclusory statements which seldom touch directly on the multi-factor approach. And though he briefly mentions the other factors in the analysis, he does not show that they outweigh the first two. Cf. Lake v. Skelton, 840 F.3d 1334, 1344 (11th Cir. 2016) ("[A]n actual drain on the state treasury is not required for immunity to apply." (internal quotation marks omitted)).

Brown also argues in the alternative that, even if CPIC is an arm of the state, Florida has waived the entity's Eleventh Amendment immunity. Not so. "The test to determine if a state has waived its sovereign immunity is a stringent one." Barnes v. Zaccari, 669 F.3d 1295, 1308 (11th Cir. 2012) (internal quotations omitted). A "waiver of Eleventh Amendment immunity must specifically permit suits in federal court." Id. It is true that the Florida Statutes explicitly state that the liability and cause of action shield does not extend to every circumstance; such exceptions include "willful tort" and "breach of any contract or agreement pertaining

to insurance coverage." Fla. Stat. § 627.351(6)(s)1. But, without more, that just means Florida waived immunity for certain suits in state courts. And Brown raises nothing before us that would meet the "stringent" test for finding that Florida waived CPIC's immunity from suits in federal court.

B.

Brown's remaining arguments on appeal relate to the "unknown employees" he attempted to sue. In particular, he alleges that the district court erred in (1) denying his motions to compel discovery, answer interrogatories, and produce documents, and (2) dismissing the claim against the unknown employees. For the former, we review the district court's decision for abuse of discretion. Holloman v. Mail-Well Corp., 443 F.3d 832, 837 (11th Cir. 2006). For the latter, we review the dismissal de novo. Richardson v. Johnson, 598 F.3d 734, 737 (11th Cir. 2010). And for both, we affirm.

Brown has failed to show that the district court abused its discretion in denying his motions to compel discovery. We have noted in the past that a district court "may deny a motion to compel further deposition questioning when the court determines that the questions are irrelevant." Com. Union Ins. Co. v. Westrope, 730 F.2d 729, 732 (11th Cir. 1984). So too here. Nothing for which Brown sought discovery would have been relevant to the district court's finding of Eleventh Amendment immunity as to CPIC—and that finding turns out to be dispositive. And as for the unknown employees, Brown only argued that his discovery motions would

have been helpful for bringing an Ex parte Young action against them. But he fails to adequately allege any violation of federal law, and Ex parte Young does not apply to mere state law violations. See Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 146 (1993).

Nor did the district court err in dismissing Brown's claims asserted against the unknown employees. "As a general matter, fictitious-party pleading is not permitted in federal court." Richardson, 598 F.3d at 738. And though we have a "limited exception" to that rule for when the plaintiff still provides some specific description of the defendant, Brown does not reach that standard. Id.

IV.

We have sympathy for Brown's apparent predicament. But because CPIC is an arm of the state, Eleventh Amendment immunity bars him from bringing his claims in federal court. We therefore AFFIRM the district court's judgment.

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C. District Court Order Granting CPIC Eleventh Amendment Immunity April 3, 2020

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROGER BROWN,
Plaintiff,
v. Case No: 8:19-cv-1951-T-36SPF

CITIZENS PROPERTY INSURANCE CORPORATION
and
UNKNOWN EMPLOYEES OF CITIZENS PROPERTY
INSURANCE CORPORATION,
Defendants.

_____/

ORDER

This matter comes before the Court upon Defendant's Motion to Dismiss Plaintiff's Amended Complaint and Memorandum of Law (Doc. 27), and Plaintiff's response thereto (Doc. 28). In the motion, Defendant, Citizens Property Insurance Corporation, argues that the Amended Complaint must be dismissed because Defendant has immunity under the Eleventh Amendment to the United States Constitution that deprives this Court of subject matter jurisdiction, and the Amended Complaint is a shotgun pleading, contains claims that are time-barred, contains claims that are barred by the independent tort doctrine, and contains impermissible bad faith allegations. Doc. 27. Plaintiff responds that Defendant does not benefit from Eleventh Amendment Immunity and that the Amended Complaint sufficiently alleges continuing harm. Doc. 28. The Court, having considered the motion and being fully advised in the premises, will grant Defendant's Motion to Dismiss.

I. BACKGROUND1

In 2011, Plaintiff, Roger Brown, co-owned a residential property in Clearwater, Florida

that was insured by Defendant, Citizens Property Insurance Corporation ("Citizens"), and that was located next to a designated sinkhole property. Doc. 20 ¶ 11. On January 11, 2011, Brown submitted a claim to Citizens for damage resulting from sinkhole activity. Id. Citizens denied the claim five months later. Id. Citizens' decision was not based on the merits of the damage claim, but based on the desire for economic profits. Id. Brown hired an attorney and obtained proof that the damage was the result of sinkhole activity, but Citizens continued to deny the claim. Id. ¶ 13.

Brown filed a lawsuit against Citizens in April 2014. Id. ¶ 14. Citizens settled the claimwith Brown for $118,829.21. Id. ¶ 16. Also in 2014, the property was foreclosed and the foreclosing entity assigned the final judgment of foreclosure to FNMA. Id. ¶ 42.

In 2015, Citizens wrote a settlement check for $59,066.14, which they made out jointly to Brown and FNMA. Doc. 20 ¶¶ 18, 45. Brown could not cash this check because he had no prior dealings with FNMA. Id. ¶ 45.

Brown waited two years, then contacted Citizens demanding payment. Id. ¶ 19. Citizens again made the check a joint check that Brown could not cash. Id. ¶ 20. This process repeated several times, with Brown demanding payment and Citizens issuing a joint check. Id. ¶ 21. Citizens did not explain why they continued to write joint checks, or why the check was not for the full settlement amount. Id. ¶

22. Brown filed the instant action seeking payment of the settlement funds. Id. ¶ 23.

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1 The following statement of facts is derived from the First Amended Complaint (Doc. 20), the allegations of which the Court must accept as true in ruling on the instant Motion to Dismiss. Linder v. Portocarrero, 963 F.2d 332, 334 (11th Cir. 1992); Quality Foods de Centro Am., S.A. v. Latin Am. Agribusiness Dev. Corp. S.A., 711 F.2d 989, 994 (11th Cir. 1983).

In the Amended Complaint, Brown alleges claims against Citizens for breach of contract, the tort of conversion, unjust enrichment, intentional breach of fiduciary duty, and intentional infliction of severe emotional distress. Id. at 23. Brown alleges that Citizens breached the settlement agreement with him by failing to remit the agreed settlement funds. Id. ¶ 63. Additionally, Brown alleges that Citizens converted the funds Brown was entitled to as payment under his insurance policy, as well as the settlement funds. Id. ¶¶ 65-70. With respect to the claim of unjust enrichment, Brown alleges that he conferred benefits on Citizens by paying premiums for his insurance policy and waiving certain rights in his settlement agreement with them, and that it is inequitable for Citizens to retain these benefits without paying the settlement amount. Id. ¶¶73-76. Brown alleges that Citizens intentionally breached its fiduciary duty by delaying payment on a valid claim and failing to pay Brown the settlement funds. Id. ¶¶ 87-90. Finally, Brownalleges that Citizens intentionally caused him severe emotional distress by intentionally engaging in this outrageous conduct and scheme for years, causing Brown spikes in his

blood pressure andheart pains, as well as anxiety, worry, anger, sadness, lack of sleep, and mental pain. Id. ¶¶ 100-108.

II. LEGAL STANDARD

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) challenges the court's subject matter jurisdiction; Rule 12(b)(1) permits a facial or factual attack. McElmurray v. Consol. Gov't of Augusta–Richmond Cty., 501 F.3d 1244, 1251 (11th Cir. 2007). On a Rule 12(b)(1) facial attack, the court evaluates whether the plaintiff "has sufficiently alleged a basis of subject matter jurisdiction" in the complaint and employs standards similar to those governing Rule 12(b)(6) review. Houston v. Marod Supermarkets, Inc., 733 F.3d 1323, 1335 (11th Cir. 2013). A Rule 12(b)(1) factual attack, however, "challenge[s] the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings, such as testimony and affidavits, are considered." Lawrence v. Dunbar, 919 F.2d 1525, 1529 (11th Cir. 1990) (citation and internal quotation marks omitted). When the attack is factual, "the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." Id. Therefore, "no presumptive truthfulness attaches to [the] plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." Id.

III. DISCUSSION

A. Subject Matter Jurisdiction

Citizens was created by the Florida Legislature "to ensure that there is an orderly market for property insurance for residents and businesses of this state." § 627.351(6)(a)1., Fla. Stat. The statute states that Citizens is "a government entity that is an integral part of the state, and that is not a private insurance company." Id. Consistent with this statement, courts regularly recognize Citizens' status as a state government entity. See, e.g., Swanson v. State Farm Mut. Auto. Ins. Co., 619CV422ORL31DCI, 2019 WL 1763244, at *2 (M.D. Fla. Apr. 22, 2019) (recognizing that Citizens is a government entity that benefits from immunity); Pulley v. Citizens Prop. Ins. Corp., 12-60122-CIV, 2012 WL 13006233, at *1 (S.D. Fla. Apr. 20, 2012) ("Citizens is unquestionably a governmental entity.").

The Eleventh Amendment provides that the "[j]udicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign state." U.S.Const. amend. XI. The Eleventh Amendment has also been interpreted by the United StatesSupreme Court as barring suits brought against a state by its own citizens. Edelman v. Jordan, 415 U.S. 651, 662–63 (1974) (stating that the "Court has consistently held that an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another State."). Eleventh Amendment also protection "extends not only to the state itself, but also to state officers and entities when they act as an arm of the state." Wendel v. Fla. Dept. of

Highway Safety & Motor Vehicles, 80 F. Supp. 3d 1297, 1303 (M.D. Fla. 2015) (citing U.S. ex rel.Lesinski v. S. Fla. Water Mgmt. Dist., 739 F.3d 598, 601 (11th Cir.2014)). For this reason, federal courts have repeatedly dismissed cases against Citizens for lack of subject matter jurisdiction under the Eleventh Amendment. Pulley, 2012 WL 13006233, at *1 (dismissing a case against Citizens "because the Eleventh Amendment precludes this Court from considering a claim against Citizens, which is a governmental entity."); see also Knap v. Citizens Prop. Ins. Corp., 09-22370-CIV, 2009 WL 10699967, at *1 (S.D. Fla. Sept. 29, 2009) ("As a government entity, Citizens is immune from claims in federal court under the 11th Amendment to the U.S. Constitution, which grants states immunity from suit in federal court.").

Immunity under the Eleventh Amendment may be waived, but only if "explicitly authorized by the state 'in its Constitution, statutes, and decisions.' " Tague v. Fla. Fish & Wildlife Conservation Com'n, 390 F. Supp. 2d 1195, 1207 (M.D. Fla. 2005), aff'd, 154 Fed. Appx. 129 (11th Cir. 2005) (quoting Silver v. Baggiano, 804 F.2d 1211, 1214 (11th Cir.1986)). With respect to Citizens, the Florida Legislature waived immunity by statute in specific instances. The relevant statute states as follows:

There shall be no liability on the part of, and no cause of action of any nature shall arise against, any assessable insurer or its agents or employees, the corporation or its agents or employees, members of the board of governors or their respective designees at a board meeting, corporation committee

members, or the office or its representatives, for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to:

a. Any of the foregoing persons or entities for any willful tort;

b. The corporation or its producing agents for breach of any contract or agreement pertaining to insurance coverage;

c. The corporation with respect to issuance or payment of debt;

d. Any assessable insurer with respect to any action to enforce an assessable insurer's obligations to the corporation under this subsection; or

e. The corporation in any pending or future action for breach of contract or for benefits under a policy issued by the corporation; in any such action, the corporation shall be liable to the policyholders and beneficiaries for attorney's fees under s. 627.428.

§ 627.351(6)(s)1., Fla. Stat. Brown relies on these waivers to contend that this Court has jurisdiction over this suit and the Eleventh Amendment does not apply. Doc. 28 at 8-9. However, none of these exceptions to immunity relate to a waiver of Citizens' immunity from suit in federal court provided by the Eleventh Amendment.

Indeed, in its sovereign immunity statute, Florida states that "[n]o provision . . . of any . . . section of the Florida Statutes . . . shall be construed to waive the immunity of the state or any of its agencies from suit in federal court . . . unless such waiver is explicitly and definitely stated to be a waiver of the immunity . . . from suit in federal court." § 768.28(18), Fla. Stat. Likewise, the United States Supreme Court has ruled that there can be no implied waiver of Eleventh Amendment Immunity and any such waiver must be express. Sossamon v. Texas, 563 U.S. 277, 284 (2011) ("Waiver may not be implied.").

In response to Citizens' Motion to Dismiss based on Eleventh Amendment Immunity, Brown cites to various provisions concerning what falls under federal subject matter jurisdiction, including federal question jurisdiction, which he claims exists in this case. Doc. 28 at 5-6. These arguments do not address the sovereign immunity created by the Eleventh Amendment. Indeed,the Eleventh Circuit has held that Eleventh Amendment immunity applies even "when the subject of the suit is an area . . . that is under the exclusive control of the Federal Government." Seminole Tribe of Fla. v. Florida, 517 U.S. 44, 72 (1996). The Court stated that "[e]ven when the Constitution vests in Congress complete law-making authority over a particular area, the Eleventh Amendment prevents congressional authorization of suits by private parties against unconsenting States." Id.

Brown also cites to the abrogation of Eleventh Amendment Immunity by the Fourteenth Amendment. Indeed, "[s]ection 5 of the Fourteenth Amendment, however, does grant Congress the authority to abrogate the States' sovereign immunity." Kimel v. Fla. Bd. of Regents, 528 U.S. 62, 80 (2000). However, Brown has not shown that any of his claims are among those for which Congress has abrogated Florida's sovereign immunity.

Additionally, Brown's reliance on the Supreme Court's decision in Ex parte Young, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908), is misplaced. Pursuant to Ex parte Young, there is "a long and well-recognized exception to [the state immunity] rule for suits against state officers seeking prospective equitable relief to end continuing violations of federal law." Summit Med. Assocs., P.C. v. Pryor, 180 F.3d 1326, 1336 (11th Cir. 1999). Brown's suit is not against a state officer and, therefore, the rule under Ex parte Young does not apply.

Based on the above, and pursuant to the Eleventh Amendment, this Court has no jurisdiction over this action. Because of the lack of subject matter jurisdiction, the Court will not address the remaining arguments by Citizens.

B. Unknown Employees

Brown also files this suit against "unknown employees" of Citizens. "As a general matter, fictitious-party pleading is not permitted in federal court." Nalls v. Coleman Low Fed. Inst., 5:09-CV-

384-OC-10GRJ, 2010 WL 5262491, at *2 (M.D. Fla. Dec. 17, 2010), aff'd, 440 Fed. Appx. 704 (11th Cir. 2011) (quoting Richardson v. Johnson, 598 F.3d 734, 738 (11th Cir.2010)). "There is a limited exception to this prohibition where a plaintiff who fails to identify a party by name has otherwise described the party with sufficient detail." Mitchell v. Headley, 2:18-CV-769-ECM, 2019 WL 3323733, at *1 (M.D. Ala. July 24, 2019) (citing Dean v. Barber, 951 F.2d 1210, 1215–16 (11th Cir. 1992)).

The unknown employees have not been identified and served while this litigation has been ongoing. Doc. 51 at 12 (stating that the unknown employees have yet to be identified). Accordingly, the inclusion of unknown and unidentified parties is not a barrier to dismissal of this action. McCarter v. McNeil & Myers Asset Mgmt. Group, LLC, 118CV04895TCBAJB, 2019 WL 2323555, at *1 (N.D. Ga. Feb. 11, 2019) (recognizing that a district court may sua sponte dismiss claims against fictitious parties). Accordingly, it is

ORDERED:

1. Defendant's Motion to Dismiss Plaintiff's Amended Complaint and Memorandum of Law (Doc. 27) is GRANTED.

2. This case is DISMISSED for lack of subject matter jurisdiction.

3. The Clerk is directed to terminate all pending deadlines and motions and CLOSE this case.

DONE AND ORDERED in Tampa, Florida on April 3, 2020.

/S/ Charlene Edwards Honeywell
United States District Judge

Copies to:
Counsel of Record and Unrepresented Parties, if any
****

D. Appellant Brief for Petition for Rehearing March 24, 2021

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
Case Number = 20-11607-BB

ROGER BROWN, PRO SE
PETITIONER/APPELLANT/PLAINTIFF
V.
UNKNOWN EMPLOYEES OF CITIZENS PROPERTY INSURANCE CORPORATION [to be discovered]
DEFENDANTS
and
CITIZENS PROPERTY INSURANCE CORPORATION

APPELLEE/DEFENDANT

PETITION FOR REHEARING AND SUGGESTION FOR REHEARING IN BANC

PETITIONER-APPELLANT-PLAINTIFF

ROGER BROWN, PRO SE
FROM THE FEBRUARY 4, 2021 PANEL DECISION
USCA11 CASE: 20-11607
BEFORE HONORABLE WILSON, ROSENBAUM, & GRANT
FROM THE APRIL 3, 2020 DISMISSAL
IN THE UNITED STATES DISTRICT COURT,
MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION,
CIVIL ACTION 8:19-cv-1951-T-36SPF.
THE HONORABLE CHARLENE HONEYWELL PRESIDING.

A CIVIL PROCEEDING

ORAL ARGUMENTS
BROWN DOES NOT WANT ORAL ARGUMENTS

RESPECTFULLY SUBMITTED:

BY:/S/_____

Roger Brown, Pro Se, rb127.legal@gmail.com, 956-408-9167
c/o PO Box 566, Dunedin, Florida 34697-0566

CERTIFICATE OF INTERESTED PERSONS
APPEAL NO. 20-11607-BB
U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Roger Brown vs. Citizens Property Insurance Corporation, et al

11th Cir. R. 26.1 (enclosed) requires that a Certificate of Interested Persons and Corporate Disclosure Statement must be filed by the appellant with this court within 14 days after the date the appeal is docketed in this court, and must be included within the principal brief filed by any party, and included within any petition, answer, motion or response filed by any party. You may use this form to fulfill this requirement. In alphabetical order, with one name per line, please list the trial judge(s), and all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates and parent corporations, including any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party. (please type or print legibly):

Brown, Roger, Pro Se Appellant/Plaintiff

Citizens Property Insurance Corporation, Appellee/Defendant

Flynn, Sean Patrick, Magistrate Judge for the Tampa Middle District of Florida.

Honeywell, Charlene Edwards, U. S. District Judge for the Tampa Middle District of Florida.

Kreiser, Erin R., Attorney, The Rock Law Group, P.A. For Appellees/Defendants.

Pearcy, Maureen, Attorney, Paul R. Pearcy, P.A. For Appellees/Defendants

Rock, Andrew, Attorney, The Rock Law Group, P.A. For Appellees/Defendants.

State of Florida

Unknown Employees of Citizens Property Insurance Corporation Appellees/ Defendants

STATEMENT OF BELIEF [& QUESTIONS]

I express a belief, based on a reasoned and studied non-professional judgment, that the Panel Decision of February 4, 2021 is contrary to the following decision(s) of the Supreme Court of the United States or the precedents of this Circuit and that consideration by the full court is necessary to secure and maintain uniformity of decisions in this court if the Panel does not want to reverse their original decision:

SUPREME COURT SPLITS:
FDIC v. Meyer, 114 S. Ct. 996, 1003 (1994)
Hess v. Port Auth. Trans-Hudson Corp., 513 U.S. 30, 115 S.Ct. 394, (1994)
Regents of the Univ. of Cal. v. Doe, 519 U.S. 425, 429-30, 117 S.Ct. 900 (1997)
Thacker v TVA, 139 S.Ct. 1435 (2019)

INTRA-CIRCUIT SPLITS:
Abusaid v. Hillsborough County Board of Commissioners, 405 F.3d 1298 [2005]
Manders v. Lee, 338 F.3d at 1328
Shands Teaching Hosp. & Clinics v. Beech St. Corp., 208 F.3d 1308, (11th Cir. 2000)

INTER-CIRCUIT SPLITS:
Hess v. Port Auth. Trans-Hudson Corp., 513 U.S. 30, 115 S.Ct. 394, (1994)
Cash v. Granville County Bd. of Educ., 242 F.3d 219, 223-24 (4th Cir. 2001)
Duke v. Grady Mun. Schs., 127 F.3d 972, 975 (10th Cir. 1997).
Fresenius Medical v. Puerto Rico, 322 F.3d 56 (1st Cir. 2003)
Hadley v. N. Ark. Cmty. Tech. Coll., 76 F.3d 1437, 1439-42 (8th Cir. 1996))
Md. Stadium Auth. v. Ellerbe Becket, Inc., 407 F.3d 255, 261 (4th Cir. 2005)

Reference To [OB-24]:
ITSI TV Productions, Inc. v. Agric. Ass'ns, 3 F.3d 1289, 1291 (9th Cir. 1993)
United States ex rel. Oberg v. Pa. Higher Educ. Assistance Agency, 745 F.3d 131, 147 (4th Cir. 2014)
Woods v. Rondout Valley Central School District Board of Education, 466 F.3d 232, 237 (2d Cir. 2006)

I express a belief, based on a reasoned and studied non-professional judgment, that this Petition involves one or more questions of exceptional importance. With no disrespect to the Panel, these questions presented in this case arise out of legal

decisions in the District Court and the Court of Appeals Panel's interpretation of legal precedents in a way that is contrary to the legal decisions which have previously been settled by the Supreme Court. Is another trip to the U.S. Supreme Court necessary? This Court should not deprive Brown, and many thousands of other policyholders, of due process of law nor deny equal protection of the laws because of splits. The questions herein are cert-worthy and may be of general importance which is ripe for Supreme Court review if not settled now within the 11th Circuit.

1. Whether CPIC is a qualified "Arm of the State" and is entitled to sovereign immunity in Federal Court under the Eleventh Amendment when conducting commercial activities?

2. Why were Splits with the U.S. Supreme Court, Intra-Circuit Splits, and Splits with other Circuits used to decide this case?

3. Did the 11th Circuit Panel correctly apply Federal Decisions in this case?

4. Why did the 11th Circuit Panel ignore Thacker v TVA?

5. How does CPIC's activity of borrowing money, issuing bonds, handling policyholder claims, denying claims, suing and being sued in its own name, seeking insurance premiums, and entering into Commercial Contracts reflect an activity by an "Arm-of-State"as a governmental function?

The Panel Decision directly conflicts with Federal law and substantially affects the application of Due Process and Equal Protection. The Panel Decision Overlooks Material Points of Law Resulting in Conflicts with the Supreme Court, other Decisions of this Court, and Decisions of Other Circuits. Therefore a Rehearing is necessary to secure uniformity of this Court's Decisions. Nothing suggests that a state entity, particularly a government corporation, must be free from any form of legal accountability for commercial decisions of the sort complained of in this case. This Petition should be granted, and the case should be reheard En Banc if a new Panel Rehearing can not reverse the Panel's initial decision.

By:_/s/_____

Roger Brown, Pro Se, rb127.legal@gmail.com,956-408-9167
c/o PO Box 566, Dunedin, Florida 34697-0566

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

This Petition meets the page limit of 15 and complies with type-volume limits of 3900 words, excluding the parts of the document exempted by R. 35-1. This Petition has been prepared in a proportionally spaced typeface using Corel Word Perfect version X7. It was used to type this Petition and used to count words. This is to certify that this Petition uses Times New Roman Typeface of 14 point or larger. The number of words are counted as 3673. The Petition is double spaced except for quotes. There are no footnotes.

BY:_/s/_____ Dated: March 24, 2021.

Roger Brown, Pro Se
rb127.legal@gmail.com
c/o PO Box 566
Dunedin, Florida 34697-0566
956-408-9167

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Petition has been electronically conveyed via the Internet to the opposing attorneys of record in this Case pursuant to a mutual agreement of June 15, 2020. Said documents transferred on this the 24th day of March, 2021 to Maureen Pearcy and Andrew Rock, attorneys of record for Citizens Property Insurance Corporation at the following address:

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GLOSSARY

ITEM	DESCRIPTION
AC	Brown's Amended Complaint
Brown	Petitioner Roger Brown [Pro Se Plaintiff, Appellant]
CPIC	Citizens Property Insurance Corporation [Appellee/Defendant]
Doc	Document
Doc	Brown's District Court Filings
EA	Emphasis Added
Hess	Hess v. Port Auth. Trans-Hudson Corp.
OB	Brown's Original Brief [Page # refers to Brown's Brief beginning with STATEMENT OF THE ISSUES]
PD	11th Circuit Panel Decision of February 2, 2021
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RB	Brown's Reply Brief
Thacker	Thacker v TVA
*D	Doc 27 [CPIC Motion To Dismiss]
*PAM	Doc 20 [Brown Amended Complaint]
*PO	Doc 28 [Brown Opposition to Doc 27]

* Before Brown caught on how to properly reference documents he used these references.

I. SPLITS: The 11th Circuit Splits again with the Supreme Court, itself, and other Circuits! Within the Eleventh Circuit splits have broad impacts and deny all citizens seeking justice the rights of due process and equal protection of the laws. To settle divergences in "Arm-of-State" determinations, the Supreme Court, in Thacker, and several cases reaffirmed therein, set a firm precedent to follow. Brown raised similar issues of widespread and persistent constitutional violations via commercial activities previously considered in this 11th Circuit and which were over-turned and remanded by the Supreme Court. See Thacker v TVA, 139 S.Ct. 1435 (2019) [OB-28,40] [RB-6,8,9,10,11,27,28]

1. 11th Circuit Splits with Supreme Court on Eleventh Amendment immunity.

A. Splits on Commercial Activity. PD uses a 4 factor entity-based test approach, whereas the Supreme Court used a first step activity test of whether activity is Commercial or Governmental. Brown argued that Commercial activities are not protected by 11th Amendment immunity. District Court and PD have erred by not applying this Supreme Court precedent.

See[Doc12,Pg21,#7C][Doc20,Pg5,#9(1),Pg13,#9(12)[Doc28,Pg8-9, #17-18][Doc30Pg20-22,#35-37][AC-5,12,13] [OB-11,14,17,20,24, 25,28,29,31,41,56]

B. Splits on Judgments. The State treasury is the primary, if not dispositive, importance on question of whether state treasury is at risk in evaluating whether an entity is entitled to 11th Amendment protection. 11th Circuit ignores weight of Judgment factor. [OB-25]

"the vulnerability of the State's purse [i]s the most salient factor in 11th Amendment determinations." Hess v. Port Auth. Trans-Hudson Corp., 513 U.S. 30, 48, 115 S.Ct. 394, 404, 130 L.Ed.2d 245 (1994) [OB-25] (EA). [Never been overturned]

2. 11th Circuit Intra-Circuit Splits on Eleventh Amendment immunity.

A. Split within its own Circuit on entity-based versus activity-based Arm-of-State status. PD did not consider CPIC's role in Brown's particular context. [PD v Shands]

"The pertinent inquiry is not into the nature of [an entity's] status in the abstract, but its function or role in a particular context." Shands Teaching Hosp. & Clinics v. Beech St. Corp., 208 F.3d 1308, 1311 (11th Cir. 2000). [EA]

B. PD did not consider CPIC's function of activity. [PD v Regents]

"Whether a defendant is an "arm of the State" must be assessed in light of the particular function in which the defendant was engaged when taking the actions out of which liability is asserted to arise." Regents of the Univ. of Cal. v. Doe, 519 U.S. 425, 429-30, 117 S.Ct. 900, 137 L.Ed.2d 55 (1997). Also quoted in Manders v. Lee 338 F.3d 1304 (11th Cir. 2003)[No. 01-13606].[EA]

C. PD did not consider CPIC's activities in Brown's case. [PD v Manders]

"a Georgia sheriff was acting as an "Arm-of-State" when overseeing the jail, but declined to hold

that a sheriff was an "Arm-of-State" in every function performed." Manders v. Lee, 338 F.3d at 1328(11th Cir)[OB-31][EA]

3. 11th Circuit Splits with other Circuits on Eleventh Amendment immunity.
A. Affirmative Defense: PD ignored this District Court error, thus the 11th Circuit splits and does not condone Eleventh Amendment immunity as an affirmative defense. See [OB-24] for [PD v other Circuit opinions].
B. Judgements:11th Circuit Splits with other Circuits on Judgments against the State treasury as the primary, if not dispositive, importance on question of whether state treasury is at risk in evaluating whether an entity is entitled to 11th Amendment protection. [OB-26,27]

"*the vulnerability of the State's purse [i]s the most salient factor in 11th Amendment determinations.*" Hess v. Port Auth. Trans-Hudson Corp.,ibid., [OB-25] (EA). [Hess has never been over-turned][Salient = notable significance]

C. Entity-Based: 11th Circuit Split with other Circuits on entity-based versus activity-based Arm-of-State status. [OB-25] This "entity-based" approach is the wrong approach the District Court and PD took to decide CPIC's status as an Arm-of-State. [OB-25] Said approach was in error with other Circuits and Thacker.
II. ARGUMENTS: CPIC operates commercially only for a select few property owners who are citizens of Florida and other states [Interstate Commerce], and who are private owners. CPIC sells Contracts of

Insurance, contracts are not made by CPIC by virtue of its powers of sovereignty, but in its capacity as a commercial corporation. The supply of insurance contracts is no more a duty of sovereignty than electricity.

"Why should selling property insurance be a governmental function?" [OB-20] "Whether CPIC performs a "real" state function takes a lot of stretching around corners to determine that CPIC is an Arm-of-State, given all the reasons it is not." [OB-31]

FEDERAL LAW: Federal Law determines if and how an entity and not a State is entitled to immunity under the Eleventh Amendment. Federal Courts are not bound by state court decisions regarding Arm-of-State status. We must look to Federal Laws and Decisions to determine if CPIC is deserving of a valid Arm-of-State status.

"The issue of whether an entity is an "arm of the State" for Eleventh Amendment purposes is ultimately a question of federal law." Manders v Lee, ibid., [EA][See also Duke v. Grady Mun. Schs., 127 F.3d 972, 975 (10th Cir. 1997).]

District Court cited: *"Eleventh Amendment also protection 'extends not only to the state itself, but also to state officers and entities when they' act as an arm of the state."* Wendel v. Fla. Dept. of Highway Safety & Motor Vehicles, 80 F. Supp. 3d 1297,1303 (M.D. Fla. 2015) (citing us. ex reI. Lesinski v. S. Fla. Water Mgmt. Dis!., 739 F.3d 598, 601 (11 th Cir.2014)). [EA]

The operative word in that quote was "ACT". An entity can sometime act like an Arm-of-State and sometimes not act like an Arm-of-State. It was this difference that the Supreme Court, in Thacker, decided by differentiating between governmental versus commercial actions. This set the precedent that over ruled the fixed entity [entity-based] approach by introducing the fact that an Arm-of-State could be a hybrid entity [activity-based].

"TVA is something of a hybrid ...." Thacker v TVA ibid., [EA]

CPIC operates a massive multiple billion dollar property insurance company in the market place with around 1250 employees and thousands and thousands of policyholders in Florida and other states. CPIC is so massive in the insurance business it is hard to find one activity that is not commercial.

THACKER CHANGED EVERYTHING: With Thacker, Arm-of-State activities are either governmental or commercial. This limits immunity to Arm-of-State status only when acting in a governmental activity and eliminates immunity protection when performing commercial non-governmental activity.

"Justice Kagan's unanimous opinion reversed the 11th Circuit and stated TVA is subject to suits challenging any of its commercial activities. The decision places TVA in the same position as a private corporation. If TVA can be stripped of immunity and sued when it acts commercially like a business, then CPIC should be treated likewise. Thacker should be

controlling and dispositive against CPIC." [RB-9,10][EA]

PD using the 4 factor test splits with the Supreme Court's unanimous decision in Thacker which overturned the 11th Circuit's four factor test in how to first determine Arm-of-State status. The new standard is to determine first if the action being considered is commercial or governmental.

"*When the TVA or similar body operates in the marketplace as private companies do, it is as liable as they are for choices and judgments. The possibility of immunity arises only when a suit challenges governmental activities — the kinds of functions private parties typically do not perform.*" Thacker v TVA. Ibid., [EA] [OB-28]

Note the plain meaning of the words or similar body, the Supreme Court was setting a precedent that their analysis can be applied to any Arm-of-State determinations and not just to TVA; otherwise those words would not have been necessary. Thacker directed that Courts must first decide if an entity's activity is commercial or governmental. Both District Court and PD ignored and split with Thacker.

"*To determine if the TVA has immunity, the court on remand must first decide whether the conduct alleged to be negligent is governmental or commercial in nature. If it is commercial, the TVA cannot invoke sovereign immunity. If it is governmental, the court might decide that an implied limitation on the clause bars the suit, but only if it finds that prohibiting the "type[ ] of suit [at issue] is necessary to avoid grave interference" with that*

function's performance. Burr, 309 U. S., at 245. Pp. 10–11." Thacker v TVA. Ibid., [EA]

Before any factor testing, the first step is to determine if the activity complained of, which is the subject of this case, is commercial activity or governmental activity. If it is commercial activity, then the determination is finalized there without further steps, and immunity can not be invoked. If it is governmental then maybe the Courts can proceed further and apply their factor testing.

"If the TVA's activities are 'commercial' .... TVA cannot invoke sovereign immunity." Thacker v TVA. ibid., [EA]

"But even if the conduct is governmental, it must be 'clearly shown' that immunizing the TVA from suit is necessary to prevent a "grave interference" with a governmental function. This, the court cautioned, is a "high bar." Thacker v TVA. ibid., [EA]

PD did not consider CPIC's activities as either governmental nor commercial and PD did not clearly show that granting immunity to CPIC would prevent grave interferences with Florida's governmental functions. District Court and PD have run afoul of Thacker, have applied the wrong legal test, and thus reached the wrong result. Both Court's analysis departs from Thacker and from several component errors in determining Arm-of-State status. District Court and PD appears to have ignored Thacker.

III. 11Th CIRCUIT'S FOUR FACTOR TEST: In the alternative, IF this Court chooses to ignore Thacker, Brown hereby demonstrates, without using the precedent of Thacker, why PD wrongfully decided that CPIC was an entity deserving of an Arm-of-State status in applying the four factor test.

1. HOW ENTITY DESCRIBED [how state law defines the entity] This should be more accurately stated as "how the entity is referred to in its documents of origin. State court decisions should not be dispositive,

"We give some deference to the rationale of state court decisions regarding the arm-of the-state status of a particular entity, but do not regard them as dispositive." Duke v. Grady Mun. Schs., ibid., [EA]

PD did not do a thorough examination of the creation of CPIC. With the exception of the Abstract, five other related issues that would have turned this factor against Arm-of-State status, were ignored by PD. Consider these areas that PD overlooked with the exception of the Abstract.

A. ABSTRACT: PD's focus was too narrow. PD failed to look at issues surrounding the origin of the entity. PD only considered the abstract instead of looking at all the factual information, documents, and issues that were created around the entity's formation. PD stated that:

"For the first factor the Florida legislature defined CPIC as "a government entity," and specifically noted that it was "not a private insurance company." Fla. Stat. § 627.351(6)(a)1." [PD-4]

That alone weighed in favor of finding CPIC an Arm-of-State. This was an oversight and created an 11th Circuit Intra-Circuit Split with a previous ruling in Shands:

"*The pertinent inquiry is not into the nature of [an entity's] status in the abstract, but its function or role in a particular context.*". Shands Teaching Hosp. & Clinics v. Beech St. Corp., ibid., [EA]

This factor depends not on the status in the abstract, but by how the entity is referred to in all of the origin issues and documents. Nature means how state origin, related legal issues, and actual functions, when taken together in total and not abstract, actually describes the entity. CPIC was a government created entity, but that alone did not bestow upon CPIC an Arm-of-State. PD inquired only into CPIC's nature as a governmental entity but failed to inquire further into other related origin issues and documents.

B. CORPORATIONS: One important consideration that courts have relied upon since the earliest cases, and which PD ignored, is whether or not the entity in question has its own corporate identity. Incorporation generally implies the existence of a separate, self determining entity.

"The rationale behind the Court's refusal to allow the state to confer its immunity on proprietary business corporations, however, was that a corporation is a different "person" from those who are its stockholders." Briscoe v. Bank of Ky., 36 U.S. at 323-24;

"..... The Supreme Court, however, ruled that because the County was a corporate entity, its relationship to the state was too remote to afford eleventh amendment protection." Lincoln County v. Luning, 133 U.S. 529, 530 (1890). [EA] [Doc30,Pg16]

CPIC is not an executive agency but only a corporate entity, separate and distinct from the Florida Government. Florida intended that CPIC would have much of the essential freedom and elasticity of a private business corporation. The fact that the state incorporated the entity indicates that it intended to create a body separate from itself, therefore CPIC can not be defined as an Arm-of-State.

C. DIGNITY: PD ignored that Suit in Federal court is not an affront to the dignity of a Corporation acting as a commercial enterprise, nor is the integrity of the State compromised when the corporate entity is sued.

"There is nothing dignified in claims of immunity that seek to avoid accountability for unlawful discrimination and violations of constitutional rights. As peoples' representatives, Courts have a responsibility to protect individuals' rights and keep the government accountable. There is ample dignity in adherence to the rule of law." [Doc 35, Pg 5-7, #11(1-12)]." [OB-21][EA]

D. SUE AND BE SUED: PD ignored the corporation's power to sue and be sued in its own name.

"that "sue and be sued clauses waive sovereign immunity and should be liberally construed". FDIC v. Meyer, 114 S. Ct. 996, 1003 (1994). [EA]

"..... agencies launched into commercial world with power to "sue and be sued" are not entitled to sovereign immunity." Loeffler v. Frank, 486 U.S. 549, 554-55 (1988). [EA]

E. PRIVATE INSURANCE COMPANY: PD ignored AGO's 2002-21 Legal Opinion which was the official Attorney General's opinion of the legislation that created CPIC. Stated simply, CPIC would operate as a private insurance company, CPIC would not perform a traditional governmental function, and CPIC's revenues were not State revenues. Nor did PD look into CPIC's function in the context of acting as a private insurance company and did not consider the facts that the Attorney General stated. See CS/SB 1418, Advisory Legal Opinion, Number: AGO 2002-21, Date: March 6, 2002.[EA] [OB-18,25,43][RB-3]
F. POLITICAL SUBDIVISION: PD ignored that CPIC is a political subdivision and not entitled to Arm-of-State status.

"(t) For the purposes of s. 199.183(1), the corporation shall be considered a political subdivision of the state and shall be exempt from the corporate income tax." 627.351_The 2019 Florida Statutes, CPIC Creation [EA] [Doc 01, Pg24,#82] [Doc20,Pg26,#2] [Doc28,Pg7,#25,26;Pg14#66;68] [RB-8]

"Political subdivisions of States--counties, cities, or whatever - never were and never have been

considered as sovereign entities. ....." Waller v. Florida, 397 U.S. 387 (1970) [EA] [RB-8]

"(local school district not an arm of the state based on (1) its designation in state law as a political subdivision,....". Mt. Healthy City Bd. of Educ. v. Doyle, 429 U.S. 274, 280 (1977) [EA]

"... towns, counties and other political subdivisions of the state cannot invoke sovereign immunity in federal....". Northern Insurance Co. v. Chatham County, 547 U.S. 189, 193 (2006) [OB-20]

"[T)he Court has consistently refused to construe the [Eleventh) Amendment to afford protection to political subdivisions .....". Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, 440 U.S. 391,401 (1979) [EA]

Supreme Court has long held that under the Eleventh Amendment, the states and their political subdivisions are separate entities. While suits against a state may not be brought in Federal court without the state's consent, no consent is necessary for suits against counties, municipalities, and other such "independent" political subdivisions.
2. CONTROL [what degree of control the State maintains over the entity] This should be more accurately stated as whether the state has a veto power over the entity's actions. PD did not consider veto power because no one in Florida has veto power over CPIC commercial activities. In this Second Factor, PD cited Fla. Stat. § 627.351(6)(a)2 and Fla. Stat. § 20.121(3). Florida has delegated CPIC

oversight obligations involving abstract planning to a selected Board of Governors who are not State employees. Appointments are not real control.

"the Court concluded that the St. Louis Board of Police Commissioners is not the state for purposes of the Eleventh Amendment, even though the governor appoints a majority of its members". Auer v. Robbins, 519 U.S. 905, 908 n.1 (1997). [EA]

That alone might look like over-sight but that is in the abstract. So a business plan is created. The FSC approves it and can change it. FSC are comprised of political figures with limited or no time for oversight duties. [Political figures appointing political figures?] That does not create real control of oversight, besides Florida has no veto power over CPIC's day to day commercial activities. PD over-looked that there are few, if any, over sight of CPIC's activities of the day to day operations of a government entity operating a private property insurance company. This was an error by PD and created an 11th Circuit Intra-Circuit Split with a previous ruling in Shands: [PD v Shands]

"The pertinent inquiry is not into the nature of [an entity's] status in the abstract, but its function or role in a particular context". Shands Teaching ibid., [EA]

LITIGATION: Since its inception CPIC has represented itself in litigation by attorneys of its own choosing and no Court at any level has ever questioned CPIC's right to do so. The Courts have repeatedly recognized CPIC's responsibility for its own litigation. CPIC conducted

litigation against the State of Florida and the Courts found that CPIC had independent litigating authority under the CPIC Act. CPIC has a philosophy, mind-set, and even formal procedure regarding the settlement of claims. CPIC will seldom put forth a reasonable offer to settle the claim. CPIC knows that most individuals unrepresented by counsel will succumb to the "take it or leave it approach".

EMPLOYEES: CPIC has about 1250 employees which the State of Florida has no direct control over. The State does not control CPIC's allocation of resources and CPIC alone hires and fires their employees. CPIC exercises sole discretion in operating the day to day commercial activities without State oversight and without any State veto power.

SELF-POLICING: Everything that happens in an insurance company is the result of a calculated move.

"Citizens claims that it is in essence "self-policing"..... However, the provisions cited by Citizens, such as the Board of Governors, approval of its plan of operations by DFS, and internal audits have absolutely nothing to do with how it handles individual claims." Perdido Sun Condominium Ass'n v. Citizens Property Insurance Corp., 129 So. 3d 1210 (Fla. 1st DCA 2014) [EA]

COMMERCIAL

ACTIVITIES: There is no real comprehensive oversight nor veto power concerning the commercial activities these types of 1250 employees perform. The State of Florida has no way to control all of these

commercial activities. Here are some of the types of employees within CPIC:

Litigation Management, Actuaries, Adjusters, Appraisers, Auditors, Bookkeepers, Claims Adjusters, Customer Service Managers, Insurance Underwriters, Insurance Policy Processing Clerks, Insurance Appraisers, Insurance Investigators, Loss Control Specialists, Policy Maintenance, [Employees to perform these functions] To name just a few!

3. FUNDING [where the entity derives its funds] The State does not appropriate funds to CPIC and in no way undertakes to cover their operating and capital expenses. CPIC generates its own revenues by insurance premiums, borrows money in its own name, and receives no money from the State. Pointing away from Eleventh Amendment immunity, the State lacks financial responsibility for CPIC.
4. JUDGEMENTS [who is responsible for judgments against the entity] This factor is the most important and carries the most weight in deciding against Arm-of-State status. This created another Inter-Circuit split with PD. [PD v Fresenius]

"The very impetus for 11th Amendment was prevention of federal-court judgments that must be paid out of a State's treasury. Hess still "binds [the court] and has not been overruled", and rejects the 7th Circuit's suggestion in Thiel and the 11th Circuit's in Manders that the state treasury risk factor is sometimes not important." [OB-25-27] [EA] See Fresenius Medical v. Puerto Rico, 322 F.3d 56 (1st Cir. 2003) at 67-68.

Debts and other obligations of CPIC are not liabilities of the State. A judgment against CPIC would not be enforceable against the State. The Full Faith and Credit of the State of Florida is denied to CPIC and is explicitly barred from pledging it or from borrowing money in any name but its own. This creates another Intra-Circuit split with PD. [PD v Abusaid]

This Court concluded that "*to the extent that the state treasury will be spared here from paying any adverse judgment, this factor weighs in favor of denying immunity*." Abusaid v. Hillsborough County Board of Commissioners, 405 F.3d 1298 [2005] US Court of Appeals 11th Circuit. [EA] [OB-31]

This creates another 11th Circuit split with the Supreme Court. [PD v Hess]

The only factor singled out as "*of considerable importance*" is whether the state is "*obligated to bear and pay [any potential legal] indebtedness of the [entity].*" Hess found that the entity was not "Arm-of-State", based almost exclusively on the entity's "*anticipated and actual financial independence*" and its "*long history of paying its own way.*" Hess v. Port Auth. Trans-Hudson Corp., ibid., [EA] [OB-21][Doc30Pg18][EA]

The State bears no legal liability for CPIC's debts and they are not responsible for the payment of any judgments against CPIC.

IV. CONCLUSION: Therefore a Rehearing is necessary to secure uniformity of this Court's Decisions. This Petition should be granted, and the case should be reheard En Banc IF a new Panel

Rehearing can not reverse PD's initial opinion.

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E. Appellant Reply Brief to CPIC Appellee Brief September 14, 2020

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
Case Number = 20-11607-BB

ROGER BROWN, PRO SE

APPELLANT/PLAINTIFF
V.
UNKNOWN EMPLOYEES OF CITIZENS PROPERTY INSURANCE CORPORATION [to be discovered]

DEFENDANTS
and
CITIZENS PROPERTY INSURANCE CORPORATION

APPELLEE/DEFENDANT

REPLY BRIEF OF PLAINTIFF-APPELLANT, ROGER BROWN

FROM THE APRIL 3, 2020 DISMISSAL IN THE UNITED STATES DISTRICT COURT,
MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION,

CIVIL ACTION 8:19-cv-1951-T-36SPF.
THE HONORABLE CHARLENE HONEYWELL PRESIDING.

A CIVIL PROCEEDING

ORAL ARGUMENTS
BROWN DOES NOT WANT ORAL ARGUMENTS

RESPECTFULLY SUBMITTED:

BY:_____

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CERTIFICATE OF INTERESTED PERSONS
APPEAL NO. 20-11607-BB
U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Roger Brown vs. Citizens Property Insurance Corporation, et al
11th Cir. R. 26.1 (enclosed) requires that a Certificate of Interested Persons and Corporate

Disclosure Statement must be filed by the appellant with this court within 14 days after the date the appeal is docketed in this court, and must be included within the principal brief filed by any party, and included within any petition, answer, motion or response filed by any party. You may use this form to fulfill this requirement. In alphabetical order, with one name per line, please list the trial judge(s), and all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates and parent corporations, including any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party. (please type or print legibly):

Brown, Roger, Pro Se Appellant/Plaintiff

Citizens Property Insurance Corporation, Appellee/Defendant

Flynn, Sean Patrick, Magistrate Judge for the Tampa Middle District of Florida.

Honeywell, Charlene Edwards, U. S. District Judge for the Tampa Middle District of Florida.

Kreiser, Erin R., Attorney, The Rock Law Group, P.A. For Appellees/Defendants.

Pearcy, Maureen, Attorney, Paul R. Pearcy, P.A. For Appellees/Defendants

Rock, Andrew, Attorney, The Rock Law Group, P.A.
For Appellees/Defendants.

State of Florida

Unknown Employees of Citizens Property Insurance Corporation Appellees/ Defendants

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

This Reply Brief exceeds the page limit but complies with type-volume limits of 6500 words, excluding the parts of the document exempted by Fed. R. App. R. 32(f). This Reply Brief has been prepared in a proportionally spaced typeface using Corel Word Perfect version X7. It was used to type this Reply Brief and used to count words. This is to certify that this Reply Brief uses Times New Roman Typeface of 14 point or larger. The number of words are counted as 6468. The Brief is double spaced except for quotes. There are no footnotes.

BY:_____
Dated:_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Brief, along with an Appendix, has been electronically conveyed via the Internet to the opposing attorneys of record in this Appeal Case pursuant to a mutual agreement of June 15, 2020. Said documents transferred on this the __th day of ____, 2020 to Maureen Pearcy and Andrew Rock, attorneys of record for Citizens Property Insurance Corporation at the following address:

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XII. SUMMARY **[Pet. App. 84-87]**

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Bondi, Pam, Florida Attorney General, Brief of The State of Florida as Amicus Curiae in Support of Petitioner, Citizens Prop. Ins. Corp. v. Perdido Sun Condo. Ass'n CASE NO.: SC14-185 [Page 3,5]

Chief Justice John Marshall [Page 21]

CPIC Insurance 2012 Application acknowledgment, CPIC is not supported by the full faith and credit of the state of Florida. [Page 4]

Exhibit A, Page 19, #10 [Page 6]
Exhibit A, Pg 17, #9b [Page 22]
Exhibit A, Pg 21, #Paragraph 4 [Page 23]

GLOSSARY

Brown	Roger Brown
CPIC	Citizens Property Insurance Corporation
Doc	Document
EA	Emphasis Added
Pg	Page
#	Item Number
*D	Doc 27 [CPIC Motion To Dismiss]
*PAM	Doc 20 [Brown Amended Complaint]
*PO	Doc 28 [Brown Opposition to Doc 27]

* Before Brown caught on how to properly reference documents he used these references.

BROWN'S COUNTER RESPONSES TO DISTRICT COURT ISSUES RAISED BY CPIC'S APPELLEE BRIEF

I. CPIC'S ORAL ARGUMENT

Brown previously stated that Oral Arguments were not wanted. CPIC wants Oral arguments because CPIC's attorneys are young law professionals. Brown is a 72 year old with limited ability to hear, remember, and think quickly in an oral environment. Brown is already at a disadvantage as a Pro Se litigant in a long 9.5 year battle with CPIC, and an oral argument would be an even greater disadvantage.

CPIC stated as an excuse for oral arguments:

"Citizens recognizes the significant and far-reaching repercussions if this Court were to hold otherwise. To the extent this Court has any doubt that Citizens is entitled to Eleventh Amendment immunity, Citizens submits oral argument is warranted."

With all the massive resources and extensive legal expertise that CPIC has at its disposal, CPIC should have considered and recognized sooner the significant and far-reaching repercussions of this Court's ability to hold it finally accountable. CPIC should have done the right thing years ago and paid Brown or settled this 9.5 year battle prior to this

point. CPIC is just trying to get another bite at the apple to try and confuse this Court.

II. 11th AMENDMENT IMMUNITY [CPIC, Statement of Issues #1]
Brown contends that the District Court ignored recent law, ignored Brown's arguments, and wrongfully concluded that CPIC was an Arm-of-State. Brown reemphasizes reasons cited previously and reorganized here that the District Court was in error. See Also: [Brown's Page Numbering in Brief at: Pgs 13, 15, 18, 20, 25, 26, 27, 30, 31, 34, 37, 38, 39, 40, 44, 51, 52, 53, 65, 66, 67, 69, 70][Doc 20, Pg , #9(1)][Doc 28, Pg 6-10, #11-20][Doc 30, Pg 6-23, #12-39]

CPIC filed a shotgun Motion To Dismiss [Doc 27] claiming various defenses. If CPIC was an Arm-of-State, all they had to do was claim a sole defense of the 11th Amendment. But they did not! Why did they instead file a shotgun defense? Obviously, they were not confident of their status as an Arm-of-State.

CPIC was created by the Florida Legislature as an independent political subdivision Corporation. Brown states that CPIC was never an Arm-of-State corporation. The state does not become a conduit of its immunity in suits against its agents or instrumentalities merely because they do its work. Nor does the creation of a government corporation confer upon it legal immunity. A corporate entity's relationship to the state is too remote to afford Eleventh Amendment protection.

"The Eleventh Amendment does not automatically protect political subdivisions of the state from liability". Moor v. County of Alameda, 411 U.S. 693 (1973). [EA]

Eleventh Amendment immunity does not extend to all "lesser entities" associated with the state; rather it extends only to entities that the Court considers to be "arms" or "instrumentalities" of the state. Alden v. Maine, 527 U.S. 706, 728 (1999) [EA]

"... towns, counties and other political subdivisions of the state cannot invoke sovereign immunity in federal courts, even if they exercise a "slice of state power." Northern Insurance Co. v. Chatham County, 547 U.S. 189, 193 (2006) [EA]

2002: CPIC was created by the Legislature but not as an Arm-of-State:

"..... CS/SB 1418 ... Citizens Property Insurance Corporation ..... would not perform a traditional governmental function. Its revenues would not be subject to legislative appropriation and would be held solely for the purpose of satisfying insurance claims. ..... the corporation would operate like a private insurance company." [Florida] Advisory Legal Opinion- AGO 2002-21 [EA] [Accessed 2019-07-22]
http://www.myfloridalegal.com/ago.nsf/Opinions/9ADA2CD70F68DC5385256B740067BC9C

The legislature could not give CPIC immunity:

" ... *"the Legislature does not "grant" sovereign immunity..."* Pam Bondi, Florida Attorney General, Brief of The State of Florida as Amicus Curiae in

Support of Petitioner, Citizens Prop. Ins. Corp. v. Perdido Sun Condo CASE NO.: SC14-185 [EA][Doc 52, Pg 14, # 6(17-18)]

2006: In the alternative, assuming all of the above does not disqualify CPIC as an Arm-of-State, CPIC lost the status when CPIC sued the State of Florida in its own name. CPIC acted of its own volition, for its own benefit, and not as an Arm-of-State. Such actions proves that CPIC was not closely connected to the State and suggests a lack of state control, and thus not an Arm-of-State.

CPIC operates with substantial autonomy and not as an alter ego of the State. As an extreme example consider that CPIC sued the State of Florida. That suit should eliminate the idea about CPIC being the alter ego of the State as it demonstrates CPIC's ability to make its own decisions, disrespect the State and its dignity, to be independent of the state, and govern itself.

2012: In the alternative, assuming it is normal for an Arm-of-State to sue its own creator, then CPIC lost its status when it was disclosed that the State of Florida's Full Faith and Credit was not applicable to CPIC and CPIC put that warning on all insurance applications starting in 2012.

"4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA." The 2019 Florida Statutes 627.351 (6) (c) (21) (4). [EA]

The State of Florida specifically denied all connection to CPIC and refused to be obligated on any and all debts, acts, records, and judicial Proceedings of CPIC. This is a paramount disconnect in a relationship.

2014: In the alternative, assuming that an Arm-of-State does not need the Full Faith and Credit backing of the State, CPIC lost its status when Attorney General of Florida, Pam Bondi stated that the legislature could not have given CPIC 11th Amendment immunity!

In the alternative, assuming that Pam Bondi lied and CPIC did get 11th Amendment immunity, CPIC waived its immunity by entering into Brown's first lawsuit in state court willingly. [April 9, 2014] [Case #14-002748-CI]

In the alternative, assuming that CPIC did not waive immunity by entering into Brown's first lawsuit. CPIC waived its immunity by preparing and executing the "Settlement Agreement", Brown's second commercial contract, a non-first-party-contract in which CPIC unequivocally agreed to subject itself to litigation, without limitation, for performance.[Doc 28, Pg 19, # 66]

"10. Enforcement. Nothing in this Agreement shall be construed to waive the INSUREDS', CITIZENS', or the LAW FIRMS' right to bring an action to enforce its terms." [EA] Non-Insurance Policy, 2nd Contract with CPIC of August 8, 2014. [Doc 20-1, Exhibit A, Page 19, #10]

2019: In the alternative, assuming that none of the above affects CPIC's status as an Arm-of-State, then remember that Brown sued CPIC twice over commercial contracts [2014 & 2019]. Brown never sued the State of Florida, nor did he sue CPIC over a state governmental function. CPIC does not have Arm-of-State status when performing non-governmental functions. The non-governmental commercial actions of CPIC do not invoke the protection of an 11th Amendment immunity for an Arm-of-State. Was CPIC performing a government function when:

1. denied Brown's insurance claim, due to their own financial difficulties
2. denied proof of the claim before litigation
3. agreed to settle with Brown via a commercial contract, a non-first party contract [Doc 28, Pg 18, #64]
4. refused to pay Brown
5. caused Brown emotional stress
6. refused to settle payment of the commercial contract with Brown on multiple occasions
7. forced Brown to sue the second time in federal court on a non-first party contract

None of these were governmental functions! [See Thacker v TVA]

2020: Quoting from CPIC's Brief at page 41:

"*The Perdido Sun opinion makes clear that any cause of action premised in Citizens' claims handling or adjustment is a bad faith claim and is prohibited.* [Id. at 668]. Citizens is immune from a bad faith cause of action."

Brown's Causes of Action were not solely premised on claims handling or adjustment, but were also premised upon the breach of a non-first-party commercial contract and related tort causes. [Doc 28, Pg 19, # 66]

More reasons CPIC is not an Arm-of-State: [Doc Brown's Brief, Pg 46-50] & [Doc 30, Pg 15-17, #29][Brown's Page Numbering in Brief at: Pgs 15, 20, 21, 24, 26, 27, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 44, 45, 46, 50]

CPIC's incorporation implies the existence of a separate, self-determining entity, and indicates that the State intended to create a body separate from itself. Of particular importance is the corporation's power to sue and be sued in its own name. CPIC was created as an autonomous entity with rights against the state and the power to pursue interests of its own. A corporation is a different "person" from those who are its stockholders. Because Eleventh Amendment immunity inheres in states and not their political subdivisions, a state agency that wishes to claim state immunity must establish that it is acting as an Arm-of-State, CPIC has not done so!

"(local school district not an arm of the state based on (1) its designation in state law as a political subdivision, (2) the degree of supervision by the state board of education, (3) the level of funding received from the state, and (4) the districts' empowerment to generate their own revenue through the issuance of bonds or levying taxes." Mt. Healthy City Bd. of Educ. v. Doyle, 429 U.S. 274, 280 (1977) [EA]

Courts have consistently refused Eleventh Amendment immunity to counties, cities, or towns, even though such political subdivisions exercised a "slice of state power." Even when such entities enjoy immunity from suit under state law, they do not have Eleventh Amendment immunity in federal court and the states may not confer it.

"*(t) For the purposes of s. 199.183(1), the corporation shall be considered a political subdivision of the state and shall be exempt from the corporate income tax.*" 627.351_The 2019 Florida Statutes, CPIC Creation [EA]

"*Political subdivisions of States--counties, cities, or whatever-never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions.*" Waller v. Florida, 397 U.S. 387 (1970) [EA]

"*..... much of what the TVA does could be done—no, is done routinely—by non-governmental parties. Just as the TVA produces and sells electricity in its region, privately owned power companies (e.g., Con Edison, Dominion Energy) do so in theirs. As to those common place commercial functions, the emphasis in the oft-used label "public corporation" rests heavily on the latter word.*" TVA v. Hill 437 U. S., at 157." Thacker v TVA, U.S. Supreme Court, No. 17–1201 (April 29, 2019) [EA]

CPIC has no sovereign powers of eminent domain, police power, or taxing power. As a corporation, CPIC has the independent power to managed its non-governmental commercial insurance activities; all without state approval and without the full faith and credit backing of the state. If CPIC performs a governmental function it is not apparent.

How can CPIC's commercial activities of selling insurance, paying commissions, issuing policies, canceling policies, collecting premiums, paying expenses, denying claims, adjusting claims, settling claims, issuing bonds, borrowing money, entering into commercial contracts, suing and being sued, breaching contracts, settling contract breaches, committing willful torts, settling willful torts, taking and holding property in its own name, hiring contractors, hiring outside attorneys, and hiring employees be considered governmental functions? They are not! CPIC is not an Arm-of-State in these commercial functions.

In the alternative, IF CPIC is an Arm-of-State, all it can be is a hybrid Arm-of-State which performs mostly non-governmental activity. And that non-governmental activity is not subject to an 11th Amendment immunity defense as illustrated by the 2019 U.S. Supreme Court decision in Thacker v TVA.

Assuming this Court continues to think that CPIC is still an Arm-of-State, despite all the reasons previously stated by Brown that it is not, this Court should re-consider Thacker v. TVA. Justice Kagan's unanimous opinion reversed the 11th Circuit, which

had sided with longstanding Sixth Circuit precedent treating many TVA functions as immune from suit. The Court stated TVA is subject to suits challenging any of its commercial activities. The law thus places the TVA in the same position as a private corporation supplying electricity. If TVA can be stripped of immunity and sued when it acts like a business then CPIC should be treated likewise. Thacker v. TVA should be controlling and dispositive against CPIC.

Accordingly, actions by a so-called Arm-of-State are divided into two functions:

1. Governmental
2. Commercial

CPIC has not listed any specific governmental functions that it performs in its Brief or elsewhere. CPIC does not possess any powers and responsibilities reserved to sovereign actors. There are few, if any, functions that CPIC performs that are not also performed by the many privately-owned companies that participate in the property insurance market. Allowing contract suits against CPIC in Federal Court does not create grave interference with CPIC's performance of its governmental functions, if any.

The question, just as in Thacker v TVA, would be where to draw a line between protecting CPIC's liability as an Arm-of-State, if it is such, when it is engaged in quintessential government functions versus holding CPIC accountable when it acts in a manner similar to other commercial enterprises.

CPIC's contract activities are commercial and are not protected under the 11th Amendment. CPIC's activities surrounding commercial contracts have no connection to any governmental functions. Therefore, lawsuits against CPIC in Federal Court about commercial contracts do not impose on any governmental function and is thereby exempt from 11th Amendment immunity.

It is noteworthy that CPIC's brief made no mention of Thacker v TVA. However, as the Supreme Court noted:

"the TVA is something of a hybrid, combining traditionally governmental functions with typically commercial ones."

TVA does engage in some quintessential governmental activity as exercising eminent domain to expand property holdings and appointing employees as law enforcement agents. If TVA's activities are:

"commercial—the kind of thing any power company might do—the TVA can not invoke sovereign immunity."

But even if the conduct is governmental, it must be "clearly shown" that immunizing TVA from suit is necessary to prevent a "grave interference" with a governmental function. This, the court cautioned, is a "high bar." This decision should affirm the breadth of tort liability not only for the TVA, but also for other government corporations and agencies that are engaged in commercial activities.

The effect of Brown's case does not present a substantial obstacle to CPIC's governmental functions, if any, nor does it impose an undue burden on the operation of CPIC's property insurance business. Nor is it a genuine threat to the dignity of Florida in allowing Brown to pursue contract claims against CPIC in federal court.

Finally, CPIC's status as an Arm-of-State is unconstitutional. The Eleventh Amendment was never intended to protect commercial activities.

III. SUBJECT MATTER JURISDICTION [CPIC, Statement of Issues #2]

The District Court made multiple errors in deciding lack of subject matter jurisdiction. Subject Matter Jurisdiction exits because of Federal law questions and issues raised by Brown.[Docs 01,12,20,30] Arm-of-State question is a Federal law determination to be determined by this Court. Properly ruling that CPIC is not an Arm-of-State furthers jurisdiction and allows Brown, based upon his alleged facts, to obtain more evidence through discovery to support his allegations. Brown could then bring additional coercive actions arising under federal law. Article III of the Constitution created the Supreme Court and authorized the creation of the lower federal court because of a belief that the enforcement of federal law could not be left exclusively to the state. CPIC's Arm-of-State status decided by state judiciaries and Federal District Courts that relied on them is not dispositive. [Doc 28, Pg 5-6, #7-10]

IV. SHOTGUN COMPLAINTS [CPIC, Statement of Issues #3a]

Brown does not understand what is a perfect non-shotgun complaint, Brown is not a lawyer and has no lawyer skills. Brown is not and never will be an expert in Legal Writings. So why the technicality against Brown and Pro Se litigants? The federal rules seem to reject the approach that pleading is a game of skill.[Doc 28, Pg 1-4, #2-6]

"*Where a plaintiff pleads pro se in a suit for protection of civil rights, the Court should endeavor to construe Plaintiff's Pleadings without regard to technicalities.*" Picking v. Pennsylvania Railway, 151 F.2d. 240, Third Circuit Court of Appeals

"*Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers.*" Jenkins v. McKeithen, 395 U.S. 411, 421 (1959) [EA]

Eleventh Circuit courts have identified roughly four categories of shotgun pleadings:

(1) a pleading with multiple counts where each count adopts the allegations of all preceding counts; Brown corrected his original complaint to remove this issue. Brown initially used this format because it appeared in a lot of sample complaints written by lawyers.

(2) a pleading that relies on conclusory and vague allegations not tied to any cause of action; Brown, in good faith, wrote his Amended Complaint in a way to tie more closely his allegations to specific

Causes of Action. Without discovery Brown was denied the ability to form more concrete allegations.

(3) a pleading that fails to separate out its various causes of action and claims for relief; Brown did separate each claim for relief for each Cause of Action.

(4) a pleading that asserts numerous claims against multiple defendants without specifying which defendants are responsible for which acts or omissions. Brown tied his Causes of Action to CPIC but was unable to tie them to specific hidden individuals because discovery was refused by CPIC and denied by the District Court.

In Vibe Micro, Inc. v. Shabanets, 2018 WL 268849 (11th Cir. Jan. 3, 2018) the district court sua sponte provided specific guidance as to how to remedy the deficiencies in the amended complaint. In that case the Plaintiff was represented by an attorney. Brown was given no help from the District Court as how to correct any deficiencies. In one case the attorney is assisted and in Brown's case he is left clueless about technical doctrines about legal procedure and without any guidance.

In a trial by jury, the jury is the trier of fact and applies those facts against the laws in question as directed by the judge. Brown requested a trial by Jury. The trier of facts should be the Jury and not the District Court. In a normal court case, a defendant can be held liable if he did something that violated the law. The court's job is to figure out what

the defendant did, decide whether what he did was unlawful, and, finally, what the consequences should be.

"The government of the United States has been emphatically termed a government of laws, and not of men." But as Chief Justice Marshall admonished, our government "will certainly cease to de-serve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." Marbury v. Madison, 5 U.S. (1 Cranch) 137, 163 (1803) [EA]

Through a series of technical "shotgun" doctrines and decisions, this 11th Circuit could be closing the federal courthouse door to Brown's right to a Jury Trial and to all others whose rights have been violated. These rulings affect real people, with real claims. To expect Pro Se litigants to meet standards that even some legal professionals can not meet is a punitive denial of due process and equal protection.

The U.S. Supreme Court stated the interplay between Rule 8 (pleading) and Rule 12(b)(6) as follows:

"[T]he accepted rule [is] that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41 (1957). [EA]

If Brown's Amended Complaint has elements of a shotgun, it was unintentional, done in good faith, and accomplished to the best of his non-law-school ability. To dismiss Brown's valid claims without

remedies is to penalize Brown for not being an attorney or having the resources to hire an attorney. Such a technicality denies Access to Justice to people whose constitutional rights have been violated and who have suffered great injuries.

"There can be no sanction or penalty imposed upon one, because of his exercise of constitutional rights." Miller v. U.S., 230 F. 2d. 486, 490; 42

To dismiss Brown's Complaint as a "shotgun" is to leave Brown with rights under the Constitution with no remedy because the federal courts will not enforce them due to a created technicality. This is an obvious injustice. The judiciary is the only institution obligated to hear the complaints of a single person. To dismiss Brown's Pro Se case over a "shotgun" Complaint is to deny the purpose of the judiciary. Those of us without political power and with meager resources have nowhere to turn except to the jury and the judiciary for the protection of our constitutional rights. The Constitution's purpose of protecting the minority from the tyranny of the majority is best fulfilled by an institution obligated to listen to the minority.

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury."

Marbury v. Madison [EA]

The above quote does not say that to claim the protection of the laws one must know how to file a technical non-shotgun complaint!

V. FAILURE TO ATTACH THE COMPLETE CONTRACT [CPIC, Statement of Issues #3b]
CPIC claims Brown did not provide a complete contract yet CPIC points to the Exhibit of the FULL contract in its Brief:

"The exhibit shows that Citizens has the right to include the mortgagee on the settlement check when there is a foreclosure,"[CPIC Brief P17] [EA]

The whole or full contract is located at the Court's Document 20-1 and labeled by Brown as Exhibit A. Brown also attached Exhibit A with his original Complaint which was physically mailed via USPS to CPIC. Plus CPIC had a copy of the original contract and got another with Brown's Amended Complaint. [Doc 28, Pg 17, #53]

This is a false technicality. If Brown failed to provide the full contract in some way, it was still in the record and CPIC could have requested another copy from Brown or pulled it from the Court records.

If the issue is Brown did not submit the full contract to this Court, then that too is a mistake. The full contract was listed in this Court's Appendix as A. The District Court listed it as Doc 20-1. Brown may have made a labeling mistake.

VI. STATUTE OF LIMITATIONS [[CPIC, Statement of Issues #3c]
Florida statute of limitations for contract lawsuits is five years. A statute of limitations "runs from the time "when the last element constituting the cause of action occurs". The cited actions and inactions

against the actors behind CPIC were ongoing and continuos and are still ongoing. Causes of Action last elements accrued on September 7 of 2018 or July 26 of 2019 or later, depending on the interpretation of the law. [Doc 20, Pg 1, #2] All dates are well within all Florida Statute of Limitations. [Doc 28, Pg 15, #31]

A statute of limitations "runs from the time the cause of action accrues" which, in turn, is generally determined by the date "when the last element constituting the cause of action occurs." Hearndon v. Graham, 767 So. 2d 1179, 1184-85 (Fla. 2000) [EA] [Doc 01, Pg 82-83, #144]

VII. INDEPENDENT TORT DOCTRINE [[CPIC, Statement of Issues #3d]
The Tiara case did away with the Economic Loss Doctrine and the Independent Tort Doctrine. [Doc 28, Pg 14, #29]

"In Florida, the contractual privity economic loss doctrine and the independent tort doctrines were often considered synonymous." De Sterling v. Bank of America, N.A., 2009 WL 3756335 (S.D. Fla. Nov. 6, 2009) [EA]

In 2013, the Florida Supreme Court issued its landmark decision in Tiara Condominium Association, Inc. v. Marsh & McLennan Companies, Inc.,[110 So. 3d 399 (Fla. 2013)] reducing the applicability of the economic loss doctrine and holding that it is "only applicable in the context of products liability cases". Even dissenting Judge Canady knew that both the Economic Loss Doctrine and the Independent Tort Doctrine were both dead

outside of product liability cases. [Doc 28, Pg 14, #28-29] Justice Canady, who, in his dissenting opinion, opined that:

"[w]ith today's decision, we face the prospect of every breach of contract claim being accompanied by a tort claim." Id at 411. [EA]

VIII. BAD FAITH [[CPIC, Statement of Issues #3e] CPIC claims "This issue was squarely addressed by the Florida Supreme Court in Citizens Prop. Ins. Corp.". Further CPIC states that *"The Perdido Sun opinion makes clear that any cause of action premised in Citizens' claims handling or adjustment is a bad faith claim and is prohibited."* [EA]

That decision is unconstitutional according to Florida's Constitution and the U.S. Constitution because it impairs contracts, violates due process, ex post facto laws, and violates equal protection. [Doc 30, Pg 29-32, #48-53]

"Contracts between individuals or corporations are impaired within the meaning of the Constitution (article 1, 10, cl. 1) whenever the right to enforce them by legal process is taken away or materially lessened". Lynch v. United States 292 US 571, 579. [EA] [Doc 30, Pg 22, #37]

"... the well-accepted principle that virtually no degree of contract impairment is tolerable in this state." Yamaha Parts Distributors Inc. v. Ehrman, 316 So.2d 557 (Fla.1975). [EA]

"There is no more important provision in the Federal Constitution than the one which prohibits

States from passing laws impairing the obligation of contracts, and it is one of the highest duties of this court to take care the prohibition shall neither be evaded nor frittered away." Murray v. Charleston 96 U.S. 432, 448 (1877). [EA]

"*No community can have any higher public interest than in the faithful performance of contracts and the honest administration of justice.*" Edwards v. Kearzey, 96 U.S. 595, 603 (1877).

"*It was undoubtedly adopted as a part of the Constitution for a great and useful purpose. It was to maintain the integrity of contracts, and to secure their faithful execution throughout this Union, by placing them under the protection of the Constitution of the United States.*" Bronson v. Kinzie, 42 U.S. 311 (1843)

"*The convention appears to have intended to establish a great principle, that contracts should be inviolate.*" Chief Justice John Marshall

That decision also violates 627.351(6)(a)(1) which requires that CPIC's "service to policyholders to be no less than the quality provided" in the marketplace.

CPIC uses the "bad faith exemption" as a sword to defraud policyholders by acting in bad faith at will, without any accountability, nor any responsibility all because of an unconstitutional law that impairs contracts only for CPIC and no other property insurance company. [Doc 28, Pg 10-13, #21-26]

CPIC's "bad faith" activities are not governmental functions. The Florida law exempting CPIC from bad faith should be stricken by this Court as unconstitutional. When a policyholder buys property insurance from CPIC by entering into a commercial insurance contract there is no warning that CPIC can act in bad faith against the policyholder. The policyholder believes CPIC's commercial property insurance contracts are like similar insurance contracts. But they are not because CPIC's contracts have been impaired such that CPIC does not have to conduct fair dealings nor do they have to act in good faith despite all contracts in Florida containing an implied covenant of "good faith".

"There is an implied covenant of good faith and fair dealing in every contract." Meruelo v. Mark Andrews of Palm Beach, Ltd., 12 So.3d 247, 251 (Fla. 4th DCA 2009).

To exempt CPIC from "good faith" in its contracts violates both the U.S. Constitution and the Florida Constitution. If not for the federal courts, what is to stop the Florida Legislature from enacting more laws that are unconstitutional but politically expedient? The primary reason for having federal courts is to enforce the Constitution against the will of the majority.

Prohibited laws.—No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed. Florida Constitution, Article I Declaration Of Rights, Section 10. [EA][Accessed 2019-07-22]

[http://www.flsenate.gov/Laws/Constitution#A1S09]

"No State shall ..... pass any ..... ex post facto Law, or Law impairing the Obligation of Contracts .... ." United States Constitution, Article I, Section 10, Clause 1. [EA]

IX. MERITS OF THE CASE [CPIC Statement of Facts, Pg 16-17]
Why is CPIC arguing the merits of the case in the Statement of Facts? CPIC spent two paragraphs talking about what Brown alleged which has little bearing upon the issues before this Court.

Further, CPIC's statement is in error. Brown was never obligated on a mortgage. [Doc 20-1, or Doc A, Pg 17, #9b] Settlement Agreement [Commercial Contract #2]

"9. Other Provisions. b. The INSUREDS represent and warrant that no other individual or entity, including the INSUREDS' attorneys, public adjusters and their successors or assigns, have an interest in, or claim for the proceeds for the above ground or below ground damage payments described in this Agreement."

Brown represented and warranted that no other individual or entity, including the INSUREDS' attorneys, public adjusters and their successors or assigns, had an interest in, or claim for the proceeds for damage. The statement was true because Brown was not obligated on the mortgage and note with GTE nor did Brown owe any money to anyone.

In the EXHIBIT A to that Settlement Agreement, DENIED SINKHOLE CLAIMS, INSURED'S ACKNOWLEDGMENT [Doc A or Doc 201-1, Pg 21, #Paragraph 4]
Brown marked through this statement because it did not apply to Brown:

I/We hereby certify that the property listed above is not subject to a foreclosure proceeding. [EA]

With that language marked through, so indicating that it was not applicable to Brown, Brown initialed the deleted phrase. CPIC could have refused the documents signed by Brown because of that change, but they did not. CPIC accepted Brown's exclusion. There was no legal cloud upon Brown. To involve a party Brown neither knew or had any dealing with was an intentional act and a violation of the Contract.

X. PUNITIVE DAMAGES [CPIC Statement of Facts, Pg #17]
CPIC brought this issue up so it is now another issue this Court needs to address.

Punitive caps [Fla §768] on jury punitive damages along with a non-jury mini-trial [§768.72] created by the Florida Legislature and the Florida Supreme Court [Globe Newspaper Co. v. King, 658 So. 2d 518 (Fla. 1995)], both violate the right to a jury trial which is protected in Florida's Constitution Article I, Section 22 and the U.S. Constitution's 7th Amendment. [Doc30, Pg 37-47, #63-73]

This is a violation of the inviolate clause of the Florida Constitution. In Florida punitive damages are capped in certain situations. In Jury decisions this is a violation of Florida's Constitution. A mini-trial by a Judge and a limit on punitive damages are illegal in a Jury Trial. A jury is empaneled and deliberates, with the expectation that its complete verdict will have efficacy, an issue of fact singularly within its authority. Because the jury verdict is being arbitrarily capped, the Plaintiff is not receiving his constitutional benefit of a jury trial as it has heretofore been that right. [Doc 30, Pg 41, #73]

Florida Legislature by creating caps to punitive damages [FS § 768.73] and punitive damage mini-trials [Fla. Stat. § 768.72(1)] before presentation to the jury both violates Florida's Constitution Article I, Section 22 and the U.S. Constitution: [Doc 30, Pg 41, #70-71]

"The right of trial by jury shall be secure to all and remain inviolate ...". Florida Constitution [EA]

"... the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined." U.S. Constitution's 7th Amendment [EA]

The unconstitutionality of limitations on punitive damages given by a jury was previously decided in these states with similar constitutional trial by jury guarantees as does Florida: [Doc 30, Pg 39-41, #69]

Alabama:*"Limitation of punitive damages ... violates state constitution's guarantee of trial by jury. ... It is improper for legislature to substitute itself for*

jury and to fix arbitrary limit." Henderson by & Through Hartsfield v Alabama Power Co. (1993, Ala) 627 So 2d 878. [EA]

Missouri: The Missouri Supreme Court agreed ... that the punitive damages cap on common law claims "*divests the jury of its function in determining damages and, thereby, deprives her of a right to a trial by jury guaranteed by article I, section 22(a) of the Missouri constitution. ....*"Looking to due process rights as they existed at the time the Missouri Constitution was adopted, the Court felt that the damages cap "*necessarily changes and impairs the right of a trial by jury as heretofore enjoyed.*" [EA]

6th Federal Circuit [Tennessee] "*.... punitive damages awards were part of the right to trial by jury at the time the Tennessee Constitution was adopted. Based on this review – including a line of cases addressing the measure of punitive damages as a "finding of fact" within the exclusive province of the jury – the majority concluded that the caps provision set forth in Tennessee Code Annotated Section 29-39-104 violates the right to trial by jury under Article I, Section 6 of the Tennessee Constitution.*" [EA]

This Florida law should be stricken by this Court as unconstitutional. Brown's goal is to head to a Jury trial and requests this Court to decide this issue now.

XI. CPIC ACTS AS A PRIVATE PROPERTY INSURANCE COMPANY

CPIC states it is not a private insurance company. CPIC operates like a private mutual property

insurance company and competes with other insurance companies. CPIC sells policies to Florida citizens, residents, non-citizens, and non-residents of Florida in interstate commerce.

"[A] state voluntarily waives its Eleventh Amendment immunity by engaging in activity subject to congressional regulation." AT&T v. Bellsouth, 238 F.3d 636 (5th Cir. 2001)at 644 [EA]

The difference between CPIC and other property insurance companies is the stockholders are different. A corporation is a different "person" from those who are its stockholders. Whatever their ownership structures, property insurance companies do basically the same things.

XII. SUMMARY

Affirmation is not proper. A ruling that CPIC is not an Arm-of-State makes CPIC's issues and the District Court's Order moot.

Insurance companies have an obligation to provide policyholders with the pay-outs that their premiums entitle them to receive without elongated legal battles. CPIC has strategically chosen a business model pattern of various intentional delays and long litigation battles with its own policyholders to avoid honoring valid commercial contracts. Policyholders do not have the resources to pay attorneys to defeat CPIC's intentional delays and long litigation battles. Because of Brown's age, CPIC has extended its model in hopes Brown goes away or just dies.[Doc 28, Pg 17, #48]

Brown is challenging CPIC's claim to Arm-of-State status. If this Appeals Court does not agree with Brown's reasons cited above that CPIC is not an Arm-of-State, then for no other reason than Thacker v TVA, this Court should rule that CPIC is not an Arm-of-State. The decision about CPIC's status should not be a political decision.

After Thacker v TVA, an Arm-of-State can not claim immunity when performing commercial activities. Assuming that CPIC is an Arm-of-State, which Brown denies for all the reasons previously stated, CPIC's activities of breaching a commercial contract along with the associated tort Causes of Action are no longer subject to an 11th Immunity defense. The cited cases discussed in the District Court's Order and those in CPIC's Brief are not good law. Therefore this Court must review CPIC's status in light of Thacker v TVA.

Brown is also challenging the State of Florida's unconstitutional laws, which shields CPIC and hinders Brown's right to his constitutional rights to justice. First is the impairment of contract law which unconstitutionally exempts CPIC from "bad faith" acts. Secondly is the unconstitutional laws violating jury trials by capping punitive damages that a jury can order. This Appeals Court should have an obligation to remove CPIC's Arm-of-State status and strike the unconstitutional laws cited above.

When a government action is challenged as unconstitutional, the courts have a duty to determine whether that action exceeds constitutional limits.

The Constitution does not run on automatic pilot. It is not a passive guarantee of freedom. The Constitution must be enforced. [Doc 30, Pg 4,#7] The District Court failed to properly enforce the Constitution as illustrated herein.

"It is the duty of this Court to ascertain and declare the intent of the framers of the Constitution and to reject any act in conflict therewith." Maready v. City of Winston-Salem, 342 N.C. 708, 716, 467 S.E.2d 615, 620 (1996)

The irony is that government lawbreaking is done mostly under the guise and misnomer of the rule of law. Laws and Actions on behalf of any government that prevents an individual from exercising constitutionally protected individual and contract rights are unconstitutional.

The power to declare a legislative act unconstitutional is a delicate one; however, it is the responsibility of this Court to do exactly that. Judicial review is the power of courts to determine the constitutional validity of legislation or of actions taken by judicial, legislative, executive or governmental agencies. [Doc 28, Pg 17, #50][Doc 30, Pg 5, #8]

"An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in *legal contemplation, as inoperative as though it had never been passed."* Norton v. Shelby County, 118 U.S. 425 p. 442

"The general rule is that an unconstitutional statute, though having the form and the name of law,

is in reality no law, but is wholly void and ineffective for any purpose since unconstitutionality dates from the time of its enactment and not merely from the date of the decision so branding it; an unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed ... An unconstitutional law is void." 16 Am. Jur. 2d, Sec. 178.

"*that a law repugnant to the constitution is void, and that courts, as well as other departments, are bound by that instrument.*" Marbury v. Madison, February 24, 1803, U.S. Supreme Court.

"*An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed.*" Norton v. Shelby County, 118 U.S. 425 p. 442

Justice for Brown is overdue. The best justice is to make sure that no other policyholder of CPIC has to suffer through 9.5 years of intentional torture, waiting and long litigations. Only the threat of prosecution, forcing CPIC to act in good faith, and full jury punitive damages will keep CPIC honest.

****

F. Appellant Brief June 24, 2020

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
Case Number = 20-11607-BB

ROGER BROWN, PRO SE

APPELLANT/PLAINTIFF
V.
UNKNOWN EMPLOYEES OF CITIZENS PROPERTY INSURANCE CORPORATION [to be discovered]
DEFENDANTS
and
CITIZENS PROPERTY INSURANCE CORPORATION
APPELLEE/DEFENDANT

ORIGINAL BRIEF OF PLAINTIFF-APPELLANT, ROGER BROWN

FROM THE APRIL 3, 2020 DISMISSAL IN THE UNITED STATES DISTRICT COURT,
MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION,
CIVIL ACTION 8:19-cv-1951-T-36SPF.
THE HONORABLE CHARLENE HONEYWELL PRESIDING.

A CIVIL PROCEEDING

ORAL ARGUMENTS
BROWN DOES NOT WANT ORAL ARGUMENTS

RESPECTFULLY SUBMITTED:
BY:_/s/_____

Roger Brown, Pro Se
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c/o PO Box 566
Dunedin, Florida 34697-0566
956-408-9167

CERTIFICATE OF INTERESTED PERSONS
APPEAL NO. 20-11607-BB
U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Roger Brown vs. Citizens Property Insurance Corporation, et al

11th Cir. R. 26.1 (enclosed) requires that a Certificate of Interested Persons and Corporate Disclosure Statement must be filed by the appellant with this court within 14 days after the date the appeal is docketed in this court, and must be included within the principal brief filed by any party, and included within any petition, answer, motion or response filed by any party. You may use this form to fulfill this requirement. In alphabetical order, with one name per line, please list the trial judge(s), and all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates and parent corporations, including any publicly held corporation that owns 10% or more of the party's stock, and other

identifiable legal entities related to a party. (please type or print legibly):

Brown, Roger, Pro Se Appellant/Plaintiff

Citizens Property Insurance Corporation, Appellee/Defendant

Flynn, Sean Patrick, Magistrate Judge for the Tampa Middle District of Florida.

Honeywell, Charlene Edwards, U. S. District Judge for the Tampa Middle District of Florida.

Kreiser, Erin R., Attorney, The Rock Law Group, P.A. For Appellees/Defendants.

Pearcy, Maureen, Attorney, Paul R. Pearcy, P.A. For Appellees/Defendants

Rock, Andrew, Attorney, The Rock Law Group, P.A. For Appellees/Defendants.

State of Florida

Unknown Employees of Citizens Property Insurance Corporation Appellees/ Defendants

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

This Brief exceeds the 30 page limit but complies with type-volume limits of 13,000 words or 1300 lines, excluding the parts of the document exempted

by Fed. R. App. R. 32(f). This Brief has been prepared in a proportionally spaced typeface using Corel Word Perfect version X7. It was used to type this Brief and used to count words. This is to certify that this Brief uses Times New Roman Typeface of 14 point or larger. The number of words are counted as 12,917. The Brief is double spaced except for quotes. There are no footnotes.

BY:_/s/_____

Dated:_____

Roger Brown, Appellant
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Brief, along with an Appendix, has been electronically conveyed via the Internet to the opposing attorney of record in this Appeal Case pursuant to a mutual agreement of June 15, 2020. Said documents transferred on this the __th day of ____, 2020 to Maureen Pearcy, sole attorney of record for Citizens Property Insurance Corporation at the following address:

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ALI, Study of the Division of Jurisdiction Between State and Federal Courts 164 (1968) [Pg 15]

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CPIC Insurance 2012 Application acknowledgment, CPIC is not supported by the full faith and credit of the state of Florida. [Pg 19]

Davis, Phillip, [accessed 2019-07-13] [https://www.npr.org/templates/story/story.php?storyId=4966593] [Pg 35]

Florida State Court Case, Brown v CPIC Case #14-002748-CI, 2014 [Pg 4, 9, 37, 54]

Kern, Brian H., Article "Fla. Nixes Citizens' Plan; Bans Hiring of Lawyers for Rate Appeals" by, September 19,2006.[Accessed 2019-07-13] [https://www.insurancejournal.com/news/southeast/2006/09/19/72539.htm] [Pg 36]

Klas, Mary Ellen, Published September 21 2013 [EA] [http://www.tampabay.com/news/business/banking/citizens-racks-up-millions-in-atutorneys-fees-as-it-denies-claims/2143165] [Accessed 2019-07-13] [Pg 33]

Lopez, Anthony M., Miami Attorney [Pg 32]

Olorunnipa, Toluse, Times/Herald Tallahassee Bureau, Published February 28 2013 [accessed 2019-07-13] [https://www.tampabay.com/news/politics/citizens-property-insurance-releases-list-of-internal-complaints/1276852] [Pg 35]

Scalia, Antonin, Historical Anomalies in Administrative Law, in 1985 YEARBOOK 103, 104 (Supreme Court Historical Society) [Pg 11,18]

Schall, Dave, Extracted from [Accessed 2019-07-13] [https://usinsuranceagents.com/reviews/citizens/] [Pg 34]

The Florida Council of 100, Into the Storm: Framing Florida's Looming Property Insurance Crisis, 2010 [Pg 3]

Williams, K.C. on September 30, 2013 [Extracted from Citizens Denying Claims While Paying Its Lawyers Million$$ of Dollars [Accessed 2019-07-13] [https://www.insuranceclaimlawyerblog.com/citizens-denies-claims-while-paying-its-lawyers-million-of-dollars/] [Pg 33]

GLOSSARY

Brown	Roger Brown
CPIC	Citizens Property Insurance Corporation
Doc	Document
EA	Emphasis Added
Pg	Page

#	Item Number
*D	Doc 27 [CPIC Motion To Dismiss]
*PAM	Doc 20 [Brown Amended Complaint]
*PO	Doc 28 [Brown Opposition to Doc 27]

* Before Brown caught on how to properly reference documents he used these references.

STATEMENT OF JURISDICTION

A. District Court's Jurisdiction

This Suit was timely because according to the Florida Statutes, the statute of limitations for contract lawsuits is five years. The Causes of Action first accrued on May 29 of 2015 or January 20, 2011, depending on the interpretation of the law. The actions cited herein are ongoing and continuos. A statute of limitations "runs from the time the cause of action accrues" which, in turn, is generally determined by the date "when the last element constituting the cause of action occurs." The Causes of Action last accrued on September 7 of 2018 or July 26 of 2019, depending on the interpretation of the law. This lawsuit was timely filed on August 7, 2019.

"In adopting the 14TH Amendment, the people required the States to surrender a portion of the sovereignty that had been preserved to them by the original Constitution, so that Congress may authorize private suits against non-consenting States pursuant to its § 5 enforcement power". Fitzpatrick v. Bitzer, 427 U.S. 445 (1976).

By imposing explicit limits on the powers of the States and granting Congress the power to enforce them, the 14TH Amendment "fundamentally altered the balance of state and federal power struck by the Constitution." Seminole Tribe, 517 U. S., at 59.

The District Court had subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331, which grants the district courts "*original jurisdiction of all civil actions arising under the . . . laws . . . of the United States.*" United States law requires that those who deprive any person of rights and privileges protected by the Constitution of the United States shall be liable in action at law, suit in equity, or other appropriate measure.

"*A private party may be liable under 42 U.S.C.A. § 1983 for conspiring with state actors to deprive a citizen of their civil rights*". Keko v. Hingle, 318 F.3d 639 C.A.5 (La.) 2003; Dennis v. Sparks, 449 U.S. 24 (U.S., 1980.)

Federal jurisdiction over pendant state claims is governed by 28 U.S.C. §1367, which states:

"*[I]n any civil action in which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all claims that are so related to claims in the action ... that they form part of the same case or controversy under Article III of the United States Constitution.*" 28 U.S.C. §1367(a).

Jurisdiction is based on the 14TH Amendment, diversity of citizenship [Doc 20, Pg 3, #5][Doc 28,

Pg16, #44], 28 U.S.C. #1332, and the amount in controversy exceeds $75,000.00 exclusive of interest and costs. This court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. 1331, which provides district courts with jurisdiction over civil actions arising under the United States Constitution or laws of the United States. This court has personal jurisdiction over the Defendants who live in Florida and the corporation CPIC because the corporation's creation and principal place of business is located in Florida. Venue is proper pursuant to 28 U.S.C. 1391(b) because the events giving rise to the allegations in this complaint occurred in this district. [Doc 01, Pg 2, #3] [Doc 20, Pg 2, #3] The right to appear pro se in a civil case in Federal Court is contained in a statute, 28 U.S.C. § 1654.

Federal courts will consider state-law-based claims when a case involves claims using both state and federal law. Brown raised wide spread and ongoing persistent constitutional violations. Brown contends that there are unconstitutional laws being used under color of law by CPIC and there are unconstitutional laws being utilized in Florida because it appears that no one ever dared to questioned them. These issues will create sweeping legal changes for the public in combating the current unconstitutional laws and acts by CPIC and related others. Claims based on federal laws permits the federal court to take jurisdiction over the whole case, including any state issues raised. In these cases, the federal court is said to exercise "pendent or supplemental jurisdiction" over the state claims.

Knowing that there would be no thorough judicial review by the District Court just emboldened CPIC, state government, and state government officials to ignore the U.S. Constitution. Subject Matter Jurisdiction hangs on questions generally whether there is jurisdiction through 14th Amendment, Federal Constitution, Federal law issues, and whether the 11th Amendment immunity ever existed or was waived.

Subject Matter Jurisdiction does exit in this case for the above reasons and because CPIC, was never an "Arm of State", ended, or is not now an "Arm of State" or, in the alternative, CPIC waived its immunity in one way or another.

B. Court of Appeal's Jurisdiction
This Court has jurisdiction over this appeal pursuant to 29 U.S.C. § 1291 because the Order To Dismiss was a final order of the United States District Court.

C. Timeliness of Appeal
The District Court's Final Order was entered on April 3, 2020. A Notice of Appeal was entered on April 28, 2020 by Brown.

D. Final Judgment
This appeal is from a Final and Appealable Order that disposed of all parties' claims.

STATEMENT OF THE ISSUES

I. Subject Matter Jurisdiction Does Exist?

II. CPIC Was Never entitled to 11th Amendment Immunity as "Arm-of-State"?
III. CPIC lost "Arm-of-State" status in 2012?
IV. CPIC Does Not act like nor qualify as "Arm-of-State"?
V. CPIC waived 11th Amendment immunity?
VI. Brown's Complaints Were Not "Shotgun Complaints?
VII. Brown Should have been allowed Discovery?
VIII. Brown Was denied ability to bring Ex Parte Young allegations?
IX. District Court Denied Brown His Constitutional Right To Sue CPIC For 14th Amendment Violations of Due Process and 5th Amendment Taking?
X. Court Should Have Answered Brown's Motions for Declaratory Judgments?

STATEMENT OF CASE

It is prayed that this Court will understand that Brown has no legal training, does not have any resources of a lawyer, may not act or respond like a trained, learned, legal professional, and can access court cases only through free Internet without subscriptions, thus Court's tolerance is requested. Brown's dispute with CPIC has been ongoing for 9.5 years. CPIC has been delaying payment as a war of attrition against Brown, in hopes he goes away or just dies. If CPIC honored its commercial contracts quickly and fairly, Brown would not be here.

Brown had a 2nd mortgage [2006] on a house in Clearwater, Florida. Owner of house had to refinance due to real estate crisis of 2008. GTE Credit Union

required Brown to give up his 2nd mortgage and move to co-ownership position in order to do a refinancing for Owner. Brown only acknowledged the new GTE mortgage but did not become obligated by it nor did Brown sign the promissory note with GTE.

Brown had a valid and fully paid up insurance policy [first contract] with CPIC. Problems began in January 2011 when Brown filed a sinkhole claim for damages with CPIC. CPIC did geological testing on property in June 2011. Owner asked CPIC in writing, an expert in sinkhole situations, whether property was safe to live in, but CPIC refused to give Owner an answer. There were numerous News videos of sinkhole activity which frighten most homeowners. Out of fear from sinking into sinkhole, Owner moved out of property and assigned all interests into CPIC insurance policy over to Brown. Brown offered to buy the mortgage and note from GTE but they refused.

Motivated by CPIC's dire financial situation [Doc 01, Pg 41, #78] [Doc 20, Pg 13, #10] CPIC abandoned their fiduciary duty to Brown and a valid claim was wrongfully denied. This was when CPIC was experiencing tremendous losses from sinkhole claims. In 2010 CPIC earned $32 million in sinkhole premiums and expected to pay out $245 million in loss expenses. That was a net loss of $213 million in 2010 and $64.4 million in 2009, for a total of $277,400,000 in sinkhole losses immediately prior to year 2011. Florida Council of 100 published a position paper, among problems identified was that CPIC was undercapitalized and charged "rates not

actuarially sound". The study also found that low-risk property owners were subsidizing high risk policies. [Brown thinks Political favors?]

"*Citizens Property Insurance Corporation (CPIC) has become Florida's largest residential property insurer, an insurer that is more than $9 billion undercapitalized and which charges its 1 million policyholders rates that are not actuarially sound.*" Florida Council of 100, Into the Storm: Framing Florida's Looming Property Insurance Crisis, 2010.

CPIC wrongfully denied claim despite an adjacent property which had already been designated as a sinkhole property. Brown finally obtained an attorney to take his sinkhole case. Afterwards, property went into foreclosure and Owner later filed bankruptcy. From new geological testing done by attorneys, proof of a sinkhole was established and presented to CPIC on January 13, ,2014. CPIC refused to accept proof. Brown's attorney informs him, to his surprise, that CPIC was a state government entity and could not be sued for bad faith! [Doc 30, Pg 27-32, #48-53]

"*Contracts between individuals or corporations are impaired within the meaning of the Constitution (article 1, 10, cl. 1) whenever the right to enforce them by legal process is taken away or materially lessened*". Lynch v. United States 292 US 571, 579. [EA]

Brown's attorney sued CPIC [on first contract] in a State of Florida Court [First Lawsuit] [Case #14-002748-CI] for breach of contract on April 9,2014 to force payment of damages. CPIC waived their 11th

Amendment status, if any, by entering lawsuit willingly. In July 2014 CPIC offers to settle a large amount of outstanding sinkhole lawsuits, Brown's lawsuit was one of about 300. After admitting liability for Brown's claim in that State lawsuit, CPIC entered into Settlement Agreement [second contract] wherein Brown was to get paid a settlement. Brown was a novice in this matter, CPIC were experts.

After CPIC's delays of 3 years, 6 months, 19 days [1296 days] from Brown's filing of a claim, Brown, who knew nothing about the legal maze in which he found himself, executed a Commercial Contract [second contract] labeled as a "Settlement Agreement" with CPIC on August 8, 2014. Brown thought the matter was finally settled. Brown's lawyers had conflicts of interest against Brown, immediately abandoning their fiduciary duty to him and favoring CPIC because of the massive settlement they had arranged with CPIC. They refused to force CPIC to pay Brown. For several years Brown personally tries, on numerous occasions, to get CPIC to pay him bankable funds due from the Commercial Contract [second contract] without success.

Brown, a senior citizen from Texas, filed a Federal Lawsuit [Second Lawsuit] on August 7, 2019 against Unknown Employees of CPIC and CPIC in Federal District Court in Tampa [Doc 20, Pg 3, #4][Doc 57, Pg 2-3, # 2]. This was 8 years, 6 months, and 18 days [3121 days] after initially filing claim against CPIC. Brown could not find an attorney to take case on contingency basis because of CPIC's reputation of

avoiding payment of claims, even when justified. Brown having no funds for an attorney, acted in Pro Se. District Court wrongfully dismissed case [Doc 59] on April 3, 2020 and Brown timely filed a Notice of Appeal on April 28, 2020.

SUMMARY OF ARGUMENT

MAIN ISSUE I: SUBJECT MATTER JURISDICTION

I. Brown is not suing the State of Florida! Brown sued CPIC under diversity of citizenship and 14th Amendment for ongoing violations of his constitutional rights, which included issues of Due Process and 5th Amendment Taking. Other issues were raised about ongoing widespread and persistent Federal Law and Constitutional violations, as well as state unconstitutional acts, and various Causes-of-Action, all of which gave jurisdiction to this court. [Doc 01, Pg 2, # 3][Doc 20, Pg 2, # 3]

District Court did not correctly incorporate these and all of the below issues when wrongfully deciding lack of subject matter jurisdiction in this case! CPIC is subject to Federal law, regardless of whether CPIC ever had 11th Amendment Immunity as an "Arm-of-State", lost its "Arm-of-State" status in 2012, waived its immunity in 2014, or waived it in some other way. These are some of the questions presented herein.

MAIN ISSUES II-IV: 11th AMENDMENT "ARM-OF-STATE"

District Court refused to consider any of these!

II. CPIC was never entitled to 11th Amendment immunity!
III. IF CPIC had any immunity it was extinguished in 2012 when State took away its Full Faith and Credit backing!
IV. In alternative, CPIC does not act like nor qualify as an "Arm-of-State". District Court wrongly assumed that CPIC was an "Arm-of-State"!

A. Generally CPIC does not qualify as an "Arm-of-State".

B. Specifically CPIC does not qualify as an "Arm-of-State".

C. News Reports Show CPIC does not Act Like an "Arm-of-State".

MAIN ISSUE V: WAIVERS OF IMMUNITY

V. In alternative, assuming CPIC had some immunity, it was waived in one way or another. District Court refused to consider all of these!

A. CPIC waived Immunity in 2014 State Lawsuit!

B. CPIC's Motion to Dismiss was defective!

C. CPIC's Shotgun Motion To Dismiss Waived Immunity!

D. CPIC Unequivocally Participating in Pretrial Proceedings Waived Immunity!

E. CPIC's "Sue and Be Sued" Waived Immunity!

F. Florida Statutes Waived any Immunity CPIC had!

G. CPIC Entering into Contracts in Commerce Waived Immunity!

H. Participating in Federal Programs by the State Waived CPIC's Immunity!

I. CPIC's Participating in Interstate Commerce Waived Immunity!

RELATED ISSUES VI-X

VI. Shotgun Complaint: Brown's Complaints [Doc 01 & 20] were not "shotguns" but instead listed multiple valid Causes-of-Action. Brown even filed a Motion to add additional Causes-of-Action [Doc 51] after studying laws. Brown's Amended Complaint was accepted by Court without complaint. [Doc 22] District Court refused to act on Motion To Add Additional Causes-of-Action! [Doc 51]

VII. Discovery: All Discovery requests by Brown were denied by District Court! [Docs 36, 43, 52, 55, 56, & 57]

A. CPIC violated Fed. R. Civ. P. 26(g)(1)

B. No CPIC Discovery Allowed

C. No Unknown Employees of CPIC Discovery Allowed

VIII. Ex Parte Young allegations: Brown wanted partial discovery to discover from CPIC the Unknown Employees who were violating his contract and constitutional rights, but District Court refused. There was no way to amend his complaint and add additional defendants because District Court's denial of discovery hide the actors. Brown was prevented from filing Ex Parte Young allegations against actors to prevent their future unconstitutional acts against Brown and others!

IX. 14th Amendment Due Process: Brown was denied by District Court his Federal and State

Constitutional due process rights along with Taking [Doc 20, Pg 27-29, #65-70]. Takings Clause of 5th Amendment was made applicable to states through 14th Amendment. Brown was also denied Constitutional Due Process Rights to sue CPIC for Bad Faith. [Brown was also denied his Due Process right from suing CPIC in State Court Case because of an unconstitutional state law impairing contracts][Doc 20, Pg 19, #38; Pg 20, #44][Doc 28, Pg 11-12, #25]

X. Declaratory Judgments: Brown raised multiple Federal and State Constitutional issues in both his Original [Doc 01] and his Amended Complaint [Doc 20] plus in two Motions for Declaratory Judgments [Doc 12 & 30]. Brown raised issues in Immunity, Due Process, Impairment of Contract, Taking, Ex Post Facto Prohibition, Limits to Punitive Damages, Pro Se Fees, and Civil Conspiracy. District Court never addressed these issues!

ARGUMENT/CITATIONS OF AUTHORITIES

INTRODUCTION

District Courts are heavily loaded with cases and resources are tight. To reduce load on District Judge, Brown and CPIC's lawyer Kreiser, orally agreed to use Magistrate Judge. CPIC's attorney agreed, in writing, to use Magistrate Judge. [Doc 29, Pg 2] But later CPIC's lawyers reneged on their oral agreement and written agreement. [Doc 31] [Doc 34, Pg All] which pushed case to District Judge. District Court refused to act upon Brown's two Motions for Declaratory Judgments [Doc 12 & 30]. With no

disrespect to District Court in this case, for some reason(s) [Examples at Doc 55, Pg 1-4, # 1-5], the District Court prejudicially failed to consider Brown's underlying constitutional issues, facts, cited cases, motions and arguments of case, and prejudicially applied wrong laws or wrong interpretations of laws without thorough analysis.

Brown has no political clout nor does he have any significant importance in scheme of things in Florida as an outsider. If District Court had allowed Brown Discovery or had properly ruled on his motions, Brown could have identified the Unknown Employees of CPIC, and the case could still be ongoing with the other defendants.

If District Court had thoroughly analyzed laws, facts, and arguments of CPIC's false claim of an "Arm-of-State" status, outcome would have been different. Brown believes that laws means what they say and laws should not be interpreted to force a desired political or "social justice" outcome for CPIC. District Court cited other cases that cited other cases but did not consider new evidence and arguments to contrary. Just because other Courts have habitually ruled in error does not preclude District Court from correcting those errors.

"An unlawful or unauthorized exercise of power does not become legitimated or authorized by reason of habitude." Benny, 29 B.R. 754,762" (N.D. Cal. 1983); See also Umpleby v. State, 347 N.W.2d 156, 161 (N.D. 1984). [EA]

"Judges who "interpret" statutory and constitutional texts on the basis of what they think the law ought to be, rather than on what it actually is, are usurping the law and undermining both our constitutional form of government and the famous American ideal that ours is "famous government of laws, not of men". Antonin Scalia.

Brown now brings his Appeal to this Court for a thorough judicial review, which centers around corporation CPIC and whether CPIC has State of Florida immunity under 11th Amendment. Around this main issue are other related issues that are raised and some were discussed within District Court's Final Order of April 3, 2020, which completely dismissed case.

Florida Legislature created CPIC, it did not make it a new executive department, but it said it can sue and be sued in its own name. They cast it aside and said it can fend for itself. And to just say, well, it performs some functions, it is governmental, but when you start making that distinction this is the exact error that the District Court made.

Immunity is not a benefit that a sovereign may confer on a third party merely by stating its intent to do so. Immunity is a legal protection the law recognizes for the sovereign itself, serving to protect sovereign's state treasury and its right to direct its governmental affairs. A valid "Arm-of-State" test must ensure that a state's immunity extends to an entity only where that entity is so closely aligned with sovereign that a suit against the entity is in

practical effect a suit against the state itself. States manipulate their immunity in systematic fashions with fancy wording to avoid federal Causes-of-Action. It is important to realize that application of 11th Amendment is an issue of federal law and not state law and this Court should not consider any state court's decisions in making a determination.

"It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way; namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound that in substance. It is the duty of courts to be watchful for the constitutional rights of the citizens, and against any stealthy encroachments thereon. Their motto should be obsta principiis." quoting Justice Bradley in Boyd v. United States, 116 US. 616, 29 L.Ed. 746, 6 Sup.Ct.Rep. 524. [EA]

Nor should this Court rely upon citations of District Court Cases that just accept that CPIC was an "Arm-of-State" without a new and thorough analysis. 5th Circuit Court of Appeals, ruled that:

"an entity was not an arm of the state despite other district courts ruling the same entity was an arm of the state". & "We conclude that NHIC is not an arm of the State of Texas and is therefore not shielded by Eleventh Amendment immunity. We observe,

however, that several district courts have held NHIC to be an arm of the State of Texas." United States ex rel. Barron v. Deloitte & Touche, 381 F.3d 438, 440-42 (5th Cir. 2004)[EA]

Whether state statutes and case law view CPIC as an "Arm-of-State" is not dispositive. Hess declined to adopt state court's characterization of the agency:

"holding that the Port Authority does not enjoy Eleventh Amendment immunity despite the fact that "[s]tate courts . . . repeatedly have typed the Port Authority an agency of the States rather than a municipal unit or local district". Hess v. Port Authority Trans-Hudson Corporation, 513 U.S. 30 at 45[EA]

State Legislators are notorious about enacting laws that exempt themselves and allows their offspring to break real laws with impunity. It makes sense to scrutinize Legislature action more closely when State stands to benefit. Evils sought to be eliminated here are legislature's propensity to enact laws that are not constitutional and are not of interest to the state as a whole. Federal courts are often more skeptical of state court decisions involving issues of sovereign immunity, as otherwise:

"[a] state would have too much self-interest in extending sovereign immunity to as many of its agencies and corporate creations as possible." Miller–Davis Co. v. Illinois State Toll Highway Auth., 567 F.2d 323, 330 (7th Cir.1977). [EA]

MAIN ISSUE I
SUBJECT MATTER JURISDICTION

I. Subject Matter Jurisdiction

Brown sued under 14th Amendment for ongoing violations of his constitutional rights. Brown's Complaints raised 14th Amendment issues of Due Process and 5th Amendment Taking, ongoing, widespread, and persistent Federal Constitutional violations, Federal Law violations, as well as state unconstitutional acts which gave jurisdiction to this court. Brown never sued the State of Florida, nor did he sue over a state governmental function. Brown sued CPIC twice over commercial contracts.

District Court did not correctly incorporate these and all below issues when wrongly deciding lack of subject matter jurisdiction in this case!

"Under Article III of the Constitution, federal courts can hear "all cases, in law and equity, arising under this Constitution, [and] the laws of the United States..." US Const, Art III, Sec 2. The Supreme Court has interpreted this clause broadly, finding that it allows federal courts to hear any case in which there is a federal ingredient." Osborn v. Bank of the United States, 9 Wheat. (22 U.S.) 738 (1824). [EA]

"The doctrine captures the commonsense notion that a federal court ought to be able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law, and thus justify resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues." Grable & Sons Metal. V. Dargue Engineering (04-603) 545 U.S. 308 (2005) 377 F.3d 592, affirmed.[EA]

"*The district courts shall have original jurisdiction of all civil actions arising under the constitution, laws, or treaties of the United States.*" 28 U.S.C. § 1331 (1982). [EA]

"*a Federal question provides the basis for both the subject matter jurisdiction of the federal court and the plaintiff's substantive claim for relief.*" quoting Sun Valley Gasoline, Inc. v. Ernst Enters., 711 F.2d 138, 139-40 (9th Cir.1983). [EA]

In its landmark study in 1969, American Law Institute endorsed federal question jurisdiction:

"*to protect litigants relying on federal law from the danger that state courts will not properly apply that law, either through misunderstanding or lack of sympathy.*" American Law Institute, ALI Study of The Division of Jurisdiction Between State and Federal Courts 4 (1969). [EA]

U.S. Constitution makes Federal law "supreme," giving Federal courts the power to strike down state statutes deemed unconstitutional.

"*the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.*" U.S. Constitution, Article VI [EA]

"*This great principle is, that the constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective states, and cannot be controlled by them.*"

McCulloch v. Maryland, 17 U.S. (4 Wheat) 316, 426 (1819)[EA]

Factual v Facial [Doc 55, Pg 4 , #6 & 7] On a motion to dismiss under Rule 12(b)(1) for lack of subject matter jurisdiction, the court must:

"distinguish between a facial attack and a factual attack." Osborn v. United States, 918 F.2d 724, 729 n.6 (8th Cir. 1990).

CPIC raised a facial challenge to subject matter jurisdiction. CPIC filed 20 page shotgun Motion To Dismiss. Discussing merits of the case instead of just claiming 11th Amendment immunity, CPIC proved they were facially attacking Brown's Amended Complaint.

District Court even viewed CPIC's attack as facial and not factual:

" .... the Court questions whether Citizen's argument is more in the nature of a "facial attack." [Doc 53, Pg 3, Footnote 1] [EA]

CPIC should have been limited to the pleadings and Brown should have received protections as if defending against a motion brought under Rule 12(b)(6). District Court should have accepted all factual allegations in pleadings as true and viewed them in light most favorable to Brown. Hastings v. Wilson, 516 F.3d 1055, 1058 (8th Cir. 2008) Holt v. United States, 46 F.3d 1000, 1002 (10th Cir. 1995) (citing Ohio Nat'l Life Ins. Co. v. United States, 922 F.2d 320, 325 (6th Cir. 1990)).

MAIN ISSUES II-IV

11th AMENDMENT "ARM-OF-STATE"

II. CPIC was never entitled to 11th Amendment immunity!

District Court wrongfully ignored this issue![Doc 28, Pg 9, #19] [Doc 30, Pg 8, # 16][Doc 55, Pg 1-4, # 1-5; Pg 6-15, #11-17]. States do not have plenary power to regulate every facet of national life, nor to regulate every aspect of commercial life. CPIC never had "Arm-of-State" status. The Legislature used fancy wording but regardless, CPIC was to be the same as the "JUA", just packaged differently. As proof:

"..... CS/SB 1418 renames the JUA as the Citizens Property Insurance Corporation. While the legislation removes language which states that this entity is not a state agency and restructures the association as a corporation with its governing board appointed by the Treasurer,[6] much of the purpose and function of the corporation is the same as that of the JUA. Under the proposed legislation, the corporation would not perform a traditional governmental function. Its revenues would not be subject to legislative appropriation and would be held solely for the purpose of satisfying insurance claims. Though created by the Legislature, in practical effect the corporation would operate like a private insurance company." [Florida] Advisory Legal Opinion- AGO 2002-21 [EA]

Sovereign immunity was a common law doctrine, and there was no common law granting corporate entities immunity, and corporations did not exist when Florida was formed, thus CPIC did not have "Arm-of-State" immunity. Antonin Scalia expressed the view

that sovereign immunity is not based upon historical understanding:

"*at the time of Marbury v Madison there was no doctrine of domestic sovereign immunity, as there never had been in English law*". Antonin Scalia, Historical Anomalies in Administrative Law, in 1985 YEARBOOK 103, 104 (Supreme Court Historical Society) [EA]

Florida Legislature could not confer immunity upon CPIC, a mere corporation, on its creation because they did not have that power. As more proof, consider what Attorney General of Florida stated: [Doc 55, Pg 11-12, #12(17 & 18)]

"*...sovereign immunity is a common law doctrine .....*" & ... "*the Legislature does not "grant" sovereign immunity...*" Pam Bondi, Florida Attorney General, Brief of The State of Florida as Amicus Curiae in Support of Petitioner, Citizens Prop. Ins. Corp. v. Perdido Sun Condo CASE NO.: SC14-185 [EA][Doc 52, Pg 14, # 6(17-18)]

III. CPIC Lost All Immunity Status In 2012! District Court wrongly ignored this issue![Doc 30, Pg 18, # 32][Doc 35, Pg 5, # 10E][Doc 55, Pg 3-4, # 5(1&2)], Assuming CPIC had "Arm-of-State" immunity on its creation, CPIC lost its Immunity when State of Florida took away its full faith and credit backing in 2012. New Applications effective January 1, 2012, with all CPIC's polices had this disclaimer.

"*I also understand that Citizens Property Insurance Corporation is not supported by the full*

faith and credit of the state of Florida." CPIC New Applications 2012 [EA]

This was a surprise to both new and old policyholders because few even knew there was a connection between CPIC and State. So why was this added? In 2010 and 2011, CPIC faced huge operating losses, State of Florida decided to cut off CPIC as an "Arm-of-State". [Doc 01, Pg 41, # 78] [Doc 20, Pg 13, # 10; Pg 17, # 25; Pg 27-28, # 67][Doc 35, Pg 5, # 10(E)]

CPIC is not "Arm-of-State"nor does the State of Florida have any legal liability for CPIC. CPIC lost its Immunity when State of Florida took away its full faith and credit backing on 2012. This addition to CPIC's insurance policies clearly denies any legal liability by State of Florida. Thus CPIC ceased being an "Arm-of-State".

IV. CPIC Does Not Act Like Nor Qualify As An "Arm-of-State"!

District Court wrongfully concluded that CPIC was an "Arm-of-State"! This suit did not seek to recover assets of state, but only CPIC in its capacity as a receiver of premium assets of others which pays claims, contracts, and judgments. Why should selling property insurance be a governmental function? CPIC is not a vital public service. States are operating many enterprises which in private hands would be subject to federal regulation. While engaging in such operations, states should be deemed to accept both hazards as well as benefits.

"Arm-of-State" is a legal inquiry, not a factual one, and it must be answered by looking at actions of CPIC. 11th Amendment did not permit Legislature of Florida to grant immunity to CPIC. CPIC does not have "inherent authority" to make law or any rule-making authority. A lesser entity operating ministerially and independently of state funds as a Mutual Property Insurance Corporation is not deserving of any immunity. 11th Amendment does not extend to Corporations formed by state governments, nor does it have immunity from lawsuits under universal rule of state immunity from suit without states' consent.

"Eleventh Amendment immunity does not extend to all "lesser entities" associated with the state; rather it extends only to entities that the Court considers to be "arms" or "instrumentalities" of the state." Alden v. Maine, 527 U.S. 706, 728 (1999). [EA]

"... towns, counties and other political subdivisions of the state cannot invoke sovereign immunity in federal courts, even if they exercise a "slice of state power." Northern Insurance Co. v. Chatham County, 547 U.S. 189, 193 (2006) [EA]

Hess found that the entity was not "Arm-of-State", based almost exclusively on entity's "anticipated and actual financial independence" and its "long history of paying its own way."

The only factor singled out as "*of considerable importance" is whether the state is "obligated to bear and pay [any potential legal] indebtedness of the [entity].*"Hess v. Port Auth. Trans-Hudson Corp., 513 U.S. 30, 51 (1994)[EA]

A. Generally CPIC Does Not Qualify as an "Arm-of-State".

Suits against CPIC would not jeopardize State's treasury, integrity or dignity as few people even know of a connection between CPIC and State of Florida. Some Courts have embarked on a path of sacrificing legal rights of individuals in favor of what it calls "dignity" of states. There is nothing dignified in claims of immunity that seek to avoid accountability for unlawful discrimination and violations of constitutional rights. As peoples' representatives, Courts have a responsibility to protect individuals' rights and keep the government accountable. There is ample dignity in adherence to the rule of law. See [Doc 35, Pg 5-7, #11(1-12)]

CPIC was created by Florida Legislature as a separate and apart Corporation.

Under law, a Corporation is a person of state where created.

CPIC is structured as a "person" and not as an "Arm-of-State".

CPIC and State are not indistinguishable. People do not know there is a connection.

CPIC acts as a Mutual Property Insurance Corporation only for a select few.

CPIC's purpose is to "to sell" property insurance, with discrimination.

CPIC sells policies to non-citizens of Florida, which is interstate commerce.

CPIC's contracts with policyholders are commercial insurance contracts.

CPIC enters into contracts with litigants that are commercial contracts.
No elaborate state controls over CPIC's handling of claims, contracts or lawsuits.
CPIC is not supported by Full Faith and Credit of State of Florida.
CPIC issues its own bonds.
CPIC generates no revenues for State.
CPIC's functions reinforce idea that is not an arm-of-state.
CPIC is not a public employer.
CPIC's employees are not paid with taxpayer money.
Florida provides no funds to satisfy judgments or settlements for CPIC.
CPIC possesses a level of independence appropriate to an entity designed "to enter private sector and compete as a commercial entity.
CPIC does not occupy a constitutional office.
CPIC is autonomous from state.
CPIC has sole authority to appoint and discharge its employees

B. Specifically CPIC Does Not Qualify as an "Arm-of-State".

Eleventh Circuit rejected claim of immunity solely because:

"[t]he Alabama Supreme Court has previously declined to extend sovereign immunity" to the entity. Melton v. Abston, 841 F.3d 1207, 1234 (11th Cir. 2016).

Just because a state court decides one way or the other has no bearing upon the "Arm-of-State" determination. A state court determination of

sovereign immunity does not substitute for an independent analysis under federal standards. Federal Courts are not persuaded by political pressure. Local entities are challenges for "Arm-of-State" analysis and present distinct situations where State's own assessment of sovereign status should carry no weight. A rule of absolute immunity is in danger of becoming an instrument of injustice.

State of Florida itself is not a party nor has it sought to express its views in this litigation as a party or amicus. [This may provoke a response] CPIC is the party of record and is attempting to cloak itself in State's 11th Amendment immunity.

District Court should have concluded that "even assuming that immunity is a question of subject matter jurisdiction, that does not necessarily put burden on Brown. Such placement would effectively assume truth of CPIC's assertion that they should be immune from suit in same way as State itself is. "Arm-of-State" cases requires courts to decide first, whether CPIC can claim sovereign immunity. District Court erred on this issue. CPIC bears burden of showing it is an "Arm-of-State". Second Circuit joined its sister courts in holding that:

"governmental entity invoking 11th Amendment bears burden of demonstrating that it qualifies as an arm of the state entitled to share its immunity." Woods v. Rondout Valley Central School District Board of Education, 466 F.3d 232, 237 (2d Cir. 2006)

"[T]he circuits that have considered similar assertions of arm-of-state status have uniformly concluded that it is an affirmative defense to be raised and established by the entity claiming to be an arm of the state." United States ex rel. Oberg v. Pa. Higher Educ. Assistance Agency, 745 F.3d 131, 147 (4th Cir. 2014)

"Eleventh Amendment immunity "should be treated as an affirmative defense" and "must be proved by the party that asserts it". ITSI TV Productions, Inc. v. Agric. Ass'ns, 3 F.3d 1289, 1291 (9th Cir. 1993)

CPIC is not analogous to a governmental agency. CPIC is more like a commercial business enterprise, instituted solely for purpose of selling insurance and generating premiums.

"..... CS/SB 1418 ... Citizens Property Insurance Corporation ..... would not perform a traditional governmental function. Its revenues would not be subject to legislative appropriation and would be held solely for the purpose of satisfying insurance claims. ..... the corporation would operate like a private insurance company." [Florida] Advisory Legal Opinion- AGO 2002-21 [EA]

Some circuits assume that an entity either is or is not an "Arm-of-State" ("entity-based"), and that status applies regardless of activity at issue. This "entity-based" approach seems to be the wrong approach that District Court took to decide CPIC's status as an "Arm-of-State". Other circuits consider activity at issue and strength of state's relationship

with entity in regard to that activity ("activity-based"). Notably, the latter approach allows an entity's arm-of-state status to vary depending on nature of entity's challenged activity.

Supreme Court told us that:

"*the vulnerability of the State's purse [i]s the most salient factor in11th Amendment determinations.*" Hess v. Port Auth. Trans-Hudson Corp., 513 U.S. 30, 48, 115 S.Ct. 394, 404, 130 L.Ed.2d 245 (1994) (EA).

The very impetus for 11th Amendment was prevention of federal-court judgments that must be paid out of a State's treasury. Hess still "binds [the court] and has not been overruled", and rejects the 7th Circuit's suggestion in Thiel and the 11th Circuit's in Manders that the state treasury risk factor is sometimes not important. See Fresenius Medical v. Puerto Rico, 322 F.3d 56 (1st Cir. 2003) at 67-68.

11th Amendment's core concern is not implicated in this case. The state does not have a "legal obligation" to pay, out of the state's treasury, any funds for CPIC's general debts, contracts, obligations or judgments. Suit against CPIC does not expose the state treasury to any risk. The fact that debts or a judgement against CPIC would not be paid out of state treasury is, in itself, a clear marker that CPIC is not an "Arm-of-State".

First, Second, Fourth, Fifth, Sixth and Eighth Circuits all place primary, if not dispositive,

importance on question of whether state treasury is at risk in evaluating whether an entity is entitled to 11th Amendment protection.

"[b]ecause the State treasury factor is the 'most salient factor in Eleventh Amendment determinations,' a finding that the State treasury will not be affected by a judgment against the governmental entity weighs against finding that entity immune." Cash v. Granville County Bd. of Educ., 242 F.3d 219, 223-24 (4th Cir. 2001) ; see also Md. Stadium Auth. v. Ellerbe Becket, Inc., 407 F.3d 255, 261 (4th Cir. 2005) (*placing most importance on risk to state treasury factor in arm of state cases*). Likewise in an 8th Circuit Case *the court treated risk to treasury as most important factor.* Hadley v. N. Ark. Cmty. Tech. Coll., 76 F.3d 1437, 1439-42 (8th Cir. 1996)) [EA]

"[*B]ecause an important goal of the Eleventh Amendment is the protection of state treasuries, the most significant factor in assessing an entity's status is whether a judgment against it will be paid with state funds.*" McDonald v. Board of Miss. Levee Comm'rs, 832 F.2d 901, 907 (5th Cir.1987); Barron, 381 F.3d at 440 (*calling source of funds factor "weightiest" factor because Eleventh Amendment "exists mainly to protect state treasuries*"); Cozzo v. Tangipahoa Parish Council-President Gov't, 279 F.3d 273, 281 (5th Cir.2002) (citing Delahoussaye, 937 F.2d at 147-48) ("*Indeed, the second factor is most important because a fundamental goal of the Eleventh Amendment is to protect state treasuries.*"); Hudson, 174 F.3d at 682 (*explaining that it is "well established"that source of funds factor is "most*

important" because of purposes behind Eleventh Amendment and, in contrast, court typically "deal[s] with the last two factors in a fairly brief fashion"); Ernst v. Rising, 427 F.3d 351, 364 (6th Cir. 2005) (*"[T]here can be little doubt that the state-treasury inquiry will generally be the most important one .. "*); Ernst v. Roberts, 379 F.3d 373, 382 (6th Cir. 2004), rev'd en banc, Ernst v. Rising, 427 F.3d 351 (6th Cir. 2005) ("*Our cases uniformly make clear that, even if the other factors can be considered, still, the most significant factor is potential liability of the state treasury.*"); Alkire v. Irving, 330 F.3d 802, 811 (6th Cir. 2003) ("*We now recognize that the question of who pays a damage judgment against an entity as the most important factor in arm-of-the-state analysis, though it is unclear whether it is the only factor or merely the principal one.*"); Elam Constr. v. Reg'l Transp. Dist., 129 F.3d 1343, 1345 (10th Cir. 1997) ("*Historically, the most important consideration is whether a judgment against the entity would be paid from the state treasury.*"). [EA]

Ninth Circuit considers the first factor, whether a money judgment would be paid out of state funds the most important:

"most important" factor is not simply on the state's financial liability, but also on its "legal liability." See Beentjes v. Placer County Air Pollution Control 397 F.3d at 778 (*explaining that "[t]he first prong of the... test-whether a money judgment would be satisfied out of state funds-is the predominant factor*"); Eason v. Clark County Sch. Dist., 303 F.3d 1137, 1141 (9th Cir. 2002) (*restating five-factor test and explaining that "whether a money judgment will*

be satisfied out of state funds .. .is the most important [factor]"); Doe v. Lawrence Livermore Nat'l Lab., 131 F.3d 836, 839 (9th Cir. 1997) (*noting that "the element of state liability is the single most important factor in determining whether an entity is an arm of state . . .*"). [EA]

CPIC launched into the commercial world and authorized to engage in business transactions with a select group should have the same amenability to judicial process as a private enterprise under like circumstances. CPIC should not be able to escape the liability a private enterprise would face in similar circumstances. Suits based on a public corporation's commercial activity should proceed as they would against a private company. This Appeals Court should examine the activity of CPIC in the analysis of whether CPIC acts as an "Arm-of-State", just as the U.S. Supreme Court set forth in their unanimous decision in the TVA case. This case over-rules previous 11th Circuit opinions.

"TVA is subject to suits challenging any of its commercial activities. The law thus places the TVA in the same position as a private corporation supplying electricity. But the TVA might have immunity from suits contesting one of its governmental activities, of a kind not typically carried out by private parties..... a suit challenging a commercial act will not "grave[ly]"or, indeed, at all—interfere with the "governmental functions" " US Sup Ct. Thacker v. TVA, CERTIORARI To The U.S. Ct, of Appeals for 11th Circuit, No. 17–1201. Decided April 29, 2019. [EA]

"When the TVA or similar body operates in the marketplace as private companies do, it is as liable as they are for choices and judgments. The possibility of immunity arises only when a suit challenges governmental activities—the kinds of functions private parties typically do not perform. And even then, an entity with a sue-and-be-sued clause may receive immunity only if it is "clearly shown" that prohibiting the "type[] of suit [at issue] is necessary to avoid grave interference" with a governmental function's performance." FHA v. Burr, 309 U.S. 242 (1940) at 245. [EA]

A proprietary function is one that a private entity can perform, and is not uniquely for benefit of the general public. A governmental function applies to discretionary governmental functions, but not for proprietary (or ministerial) functions, whether the activity constitutes one that only a governmental entity could undertake. Property Insurance, which generates insurance premiums is not the activity that is traditionally undertaken by governments. Proprietary functions have been defined in part as activities not traditionally undertaken by government agencies. They tend to be activities which are also performed by private sectors, which benefit a definable category of individuals rather than the general public. Even if, CPIC's proprietary action does touch upon a governmental function, that does not render the proprietary action governmental. CPIC's property insurance activities are not essential to the state government's operation. Therefore, CPIC could not be considered an essential government function.

CPIC's activity of borrowing money, issuing bonds, handling policyholder claims, denying claims, suing and being sued in its own name, seeking insurance premiums, and entering into Commercial Contracts does not establish an effect upon the state treasury and does not reflect an activity by an "Arm-of-State".

CPIC is a corporation intentionally formed separately from an agency of the State Government. The formation was a political creation. CPIC does not occupy a constitutional office. CPIC hires private attorneys which further implicates that CPIC is not an "Arm-of-State" of Florida. The State gave CPIC an existence quite independent from the State and exercises the most minimal control over it, if any. CPIC is similar in status to a county or municipal corporation. Regardless of the confusion, controlling law makes it abundantly clear that CPIC enjoys no 11th Amendment immunity.

"... it is by now well established that "[t]he bar of the Eleventh Amendment to suit in federal courts extends to States and state officials in appropriate circumstances, but does not extend to counties and similar municipal corporations." Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 280, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977) [EA]

The test for determining immunity must be able to draw a meaningful distinction between separate entities that are genuinely "Arms-of-State" and those that are not. Immunity law is not applicable against entities that are for all practical purposes private commercial ventures, operating without meaningful

state oversight or control and generating primarily revenues for itself, and their employees.

Eleventh Circuit, in Manders v. Lee, 338 F.3d at 1328, held that a Georgia sheriff was acting as an "Arm-of-State" when overseeing the jail, but declined to hold that a sheriff was an "Arm-of-State" in every function performed.

This Court concluded that "*to the extent that the state treasury will be spared here from paying any adverse judgment, this factor weighs in favor of denying immunity.*" Abusaid v. Hillsborough County Board of Commissioners, 405 F.3d 1298 [2005] US Court of Appeals 11th Circuit. [EA]

Is CPIC acting as an "Arm-of-State" when it denies paying Brown monies owed from a Commercial Contract? Based upon their activity, CPIC was never an "Arm-of-State". Florida does not oversee CPIC's activities of borrowing of money, paying debts, issuing bonds, handling policyholder claims, denying claims, suing and being sued in its own name, seeking premiums, and entering into Commercial Contracts. There would be no effect on that activity because there are no actions mandated by state policies that would affect these CPIC's activities. Whether CPIC performs a "real" state function is in dispute and takes a lot of stretching around corners to determine that CPIC is an "Arm-of-State", given all the reasons it is not.

C. News Reports Show CPIC Does Not Act as an "Arm-of-State".

Do any of these below reports indicate that CPIC is acting like an "Arm-of-State"? Certainly not, CPIC is a political honey pot for outside lawyers, politicians, and an elite executive team. [Doc 01, Pg 20-22, # 61][Doc 51, Pg 7-9 # 11] CPIC has a history of bad behaviors and acts as a privileged class claiming to be free from liability for wrongs and injuries inflicted. CPIC is a huge 1200+ employee sized mutual property insurance organization creating a potential cesspool for political favors. With an average employee salary of $86,005, they are paid handsomely to act intentionally. Insurance companies employ actuaries to assess risks and costs. Everything that happens in an insurance company is result of a calculated move, including egregious behaviors. In 2017, CPIC's cost of battling their own policyholders on all types of claims was $72,800,000 dollars. Legal fees are a major reason for rate increases. [Doc 01, Pg 35-37, # 72G] What kind of freebies do the lawyers and other cronies kick back to the elite executives?

"Citizens is the only insurer protected by state law from lawsuits claiming adjusters operated in "bad faith, the immunity allows Citizens to adjust claims any way they see fit, whether it's appropriate or not." Anthony M. Lopez, a Miami attorney who sued Citizens more than 1,380 times since 2010. [EA] [Doc 01, Pg 38, # 74] [Unconstitutional State law]

"Citizens racks up millions in attorneys' fees as it denies claims: The insurance giant is aggressive in fighting claims, often paying legal fees rather than settling." By Mary Ellen Klas, Published September 21 2013 [EA]

[http://www.tampabay.com/news/business/banking/citizens-racks-up-millions-in-atutorneys-fees-as-it-denies-claims/2143165] [Accessed 2019-07-13] [Doc 51, Pg 7-9, # 11]

"Citizens Property Insurance Corporation has been earning a reputation for systematically denying almost every insurance claim asserted by its policyholders. Instead of honoring valid claims, Citizens spends millions of dollars each month "defending" claims – the same type of claims that other insurance companies would routinely pay without question. ....Now, on the chance you might believe that Citizens' policy of denying claims and raising merit less defenses is just urban legend, I offer the following examples of Citizens' behavior from our recent experience: Example – Our client presented Citizens with a sinkhole damage claim, which Citizens summarily denied. We provided Citizens with testing evidence which undeniably reflected sinkhole activity on our client's property and also provided reports from neighbors on all three adjacent sides (left, right and behind) which had been confirmed for sinkhole activity. Citizens' response? They offered $500. They also promised that, once the policy holder ultimately won at trial (which they conceded would happen), Citizens would appeal the outcome (regardless of merit) in order to further drag out the process. "Sadly, there is no one guarding the hen house at Citizens. Outside vendors – mostly insurance defense law firms with the most to gain from Citizens' stance on fighting claims – have convinced Citizens that the best way to handle claims is to fight tooth and nail on every issue, even when

there is absolutely no chance of winning. Obviously, the harder you fight payment on a given claim, the more money the insurance defense law firm can make billing Citizens for delaying / defending / denying the claim." By K.C. Williams on September 30, 2013 [Extracted from Citizens Denying Claims While Paying Its Lawyers Million$$ of Dollars [Accessed 2019-07-13][EA]

[https://www.insuranceclaimlawyerblog.com/citizens-denies-claims-while-paying-its-lawyers-million-of-dollars/] [Doc 01, Pg 35-37, #72G][Doc 51, Pg 7, #11]

" I have first hand experience with the corrupt, egregious, and unethical behavior of CPIC. After filing a valid claim with Citizens for covered hurricane damage in 2004, I was denied payment and subjected to an Examination Under Oath (EUO). The Citizens' contract lawyer boldly stated that he and Citizens were exempt from "Bad Faith" processing of covered claims, and, as such, he was denying my claim regardless of its validity! Appeals to Citizens, Florida state insurance regulators, Division of Financial Services, and State and Federal legislators via certified letters went unanswered. No legal firm would take my case to sue Citizens because of its being immune from "Bad Faith" processing of claims and the firms knew they couldn't win a civil suit. Just because you have an insurance policy with Citizens, it does not mean you will collect when you file a legitimate claim, and no one will be there to help you. Citizens is an abomination and must be abolished!" Dave Schall Extracted from

[https://usinsuranceagents.com/reviews/citizens/] [Accessed 2019-07-13][EA] [Doc 01, Pg 38-40, #75]

*"This action was filed in March 2012 and the ensuing litigation was highly contentious. Citizens accused Pulloquinga of arson, threatened Section 57.105 sanctions and claimed there was no coverage for the loss. Approximately 27 depositions were taken from Jacksonville to Key West and multiple hearings were held, including four summary judgment motion hearings. The case was also scheduled for trial twice. Summary judgment was eventually entered in Pulloquinga's favor on all of Citizens' defenses. On the eve of the rescheduled trial in May 2013 Citizens capitulated and agreed to pay the full policy limits as well as Pulloquinga's attorney's fees and costs. After some stalling on Citizen's part, the policy limits were eventually paid. Pulloquinga then sought determination of the amount of fees and costs from the trial court, which required yet additional hearings on her entitlement because Citizens took the unsupportable position that she had assigned her right to entitlement. The trial court properly rejected that argument."*Extracted from CPIC v. Pulloquinga, CPIC, Appellant/Cross Appellee, v. Dolores Pulloquinga, Appellee/Cross Appellant. No. 3D14–1248. Decided: December 30, 2015. [EA] [Doc 01, Pg 40, #75]

According to Perdido,"*Citizens purposely engaged in a pattern of obstruction, delay and avoidance in order to avoid its obligation to pay*". CPIC v. Perdido Sun Condominium, May 14, 2015.

Florida Supreme Court, case # SC14-185. [EA] [Doc 01, Pg 45-46, #82]

"Executives at Florida's second biggest insurance company, Citizens Property Insurance Corporation, are facing accusations of *bribes, kickbacks and insider dealing. Hundreds of disgruntled customers have sued the company for claims from last year's hurricanes."* Phillip Davis, [EA] [Doc 01, Pg 20-22, #61]

[https://www.npr.org/templates/story/story.php?storyId=4966593] [accessed 2019-07-13]

"The release of the complaint information is the latest dustup for Citizens, which is still reeling from revelations about lavish corporate spending, large raises for executives and various allegations of impropriety.... The release comes as Citizens is looking to reform itself after a series of scandals. Over the past year, the Times / Herald documented evidence of luxurious business trips, drunken exploits on company retreats, large raises for executives and the abrupt firing of four internal investigators." By Toluse Olorunnipa, Times/Herald Tallahassee Bureau, Published February 28 2013 [accessed 2019-07-13][EA] [Doc 01, Pg 21, #61]

[https://www.tampabay.com/news/politics/citizens-property-insurance-releases-list-of-internal-complaints/1276852]

"Citizens Property Insurance Corporation used homeowners' money to hire attorneys so they could sue the government, in order to force policyholders to pay even more," said Crist. "The taxpayers were

paying to sue themselves, so that some of them could pay even more. This is totally unacceptable." .... "Citizens Property Insurance Corporation seems to have forgotten that it was created to serve people during their time of great need. It seems to have forgotten that the people of Florida are the boss, and the corporation is there to serve them, not the other way around," said Crist. "It's time we remind Citizens Property Insurance of its statutory and moral duty to the people of Florida." Attorney General Charlie Crist quoted. Article "Fla. Nixes Citizens' Plan; Bans Hiring of Lawyers for Rate Appeals" by Brian H. Kern , September 19,2006.[EA] [Accessed 2019-07-13] [Doc 01, Pg 21, #61]

[https://www.insurancejournal.com/news/southeast/2006/09/19/72539.htm]

It was reported in February 2012 that a class action lawsuit had been filed against CPIC. Homeowners that were involved in the suit claimed CPIC was systematically overvaluing properties in order to raise premiums by using a software system called 360Value to inflate replacement costs of their homes, causing their premiums to skyrocket by more than 100 percent. It appeared that CPIC was testing a new tool to add to their Intentional Tort Business Scheme. [Doc 01, Pg 22, #62]

After you have read these News Reports, you should ask, Why is this allowed? Answer, Moral Hazard which breeds corruption! CPIC is not for its policyholders, it is not for a select group of homeowners, it is for the elite bureaucratic executives and their cronies. They have no respect

for the law. It is a political honey pot which masks as an "Arm-of-State". I am cynical, but after 9.5 years reading about and battling CPIC, I know a few things because I have seen a few things! What other secrets are hidden behind those closed doors?

MAIN ISSUE V
WAIVERS OF IMMUNITY

V. CPIC Waived Its 11th Amendment Immunity

In alternative, assuming CPIC had some immunity, it was waived in one way or another. District Court refused to consider any of these!

A. CPIC waived Immunity in 2014 State Lawsuit!

CPIC falsely stated in Document 25 that there was no related case. [Doc 25, Pg 1] CPIC waived immunity in state court in two distinct ways.[Doc 28, Pg 8, #15] First, CPIC by entering suit and not claiming immunity [First Lawsuit], it effectively waived immunity. Second, CPIC waived immunity by entering into a settlement agreement [second contract] in which it unequivocally agreed to subject itself to litigation for performance.[Doc 28, Pg 19, # 66]

10. Enforcement. Nothing in this Agreement shall be construed to waive the INSUREDS', CITIZENS', or the LAW FIRMS' right to bring an action to enforce its terms. [EA] Non-Insurance Policy, 2nd Contract with CPIC of August 8, 2014. [Doc 20, Exhibit A, Page 19, #10]

B. CPIC's Motion to Dismiss was Defective!

The Motion was never properly signed.[Doc 27, Pg 20-21] If you take the Certification of Service as a signature, then a non-state official, Erin Kreiser, an attorney [Doc 18, Pg 1], asserted the 11th Amendment defense. Erin R. Kreiser and/or Andrew P. Rock did not have standing to raise the 11th Amendment defense. Andrew Rock never, as far as I know, submitted a Notice of Appearance but falsely entered Document 40.

The State of Florida intentionally did not assert the 11th Amendment Defense! There was no Florida officer in appearance during the complete term of the District Court Case. Assuming CPIC is entitled to some immunity, under Florida law, attorneys for CPIC nor CPIC had the necessary authority to invoke sovereign immunity defense. CPIC's counsel's actions can not invoke sovereign immunity in absence of state law authorization, and attorneys have no such authorization. No authority has been granted to CPIC or their attorneys to invoke sovereign immunity in Federal Court. Presumably only Attorney General of Florida [Art. IV, #4, Fla. Const.] has that authority, and the Attorney General has not shown any interest in doing so. Thus, even if, CPIC has some kind of so-called immunity, it has not been invoked and thus has been waived.

C. CPIC's Shotgun Motion To Dismiss Waived Immunity!

CPIC's Motion To Dismiss used a shotgun approach by dealing directly with merits of this case. If CPIC was entitled to use 11th Amendment as a defense all they had to do was claim it. By going further they

waived any claim to 11th Amendment as a defense. [Doc 55, Pg 9-10, # 12] CPIC gave every possible reason a complaint could be denied. [Doc 27 Pg 1-2, # 2; Pg 7-20, #17-55] CPIC made an intentional tactical decision to argue merits of case thus waiving immunity.[Doc 33, Pg All]

D. CPIC Participating in Pretrial Proceedings Waived Immunity!
[Doc 32, 38, 40] [Doc 35, Pg 2, #3; Pg 5, #9][Doc 38, Pg 2, #3; Pg 3, #5] [Doc 41, Pg 1-3. #2-4; Pg 4-5, #Relief 2] [Doc 43, Pg 2, #6] [Doc 52, Pg 14, #6(13)] Brown raised legal issues that CPIC, even if it had any so-called immunity, it has been waived by unequivocally participating in pretrial proceedings. Such actions should bind CPIC to this Court's Jurisdiction. CPIC made a clear declaration, through conduct, in a way to cause anyone to reasonably believe that it intended to submit to federal jurisdiction. If a so-called state agency elects to defend on merits in federal court, it should be held to that choice the same as any other litigant. CPIC made an intentional tactical decision to argue merits of the case thus waiving immunity. [Doc 27, Pg 8-20, # 20-55] [Doc 33, Pg All] CPIC participated in Pretrial activities, which thereby waived any 11th Amendment defense. [Doc 55, Pg 9-10, #12(12 All)]

E. CPIC's Sue and Be Sued Waived Immunity! If CPIC ever had immunity, "can sue and be sued" in its own name proves it is not entitled to sovereign immunity. Courts have held that "sue and be sued" statutes waive sovereign immunity. See US Sup Ct. Thacker v. TVA, CERTIORARI To The U.S. Ct, of

Appeals for 11th Circuit, No. 17–1201. Decided April 29, 2019.

"sue and be sued clauses waive sovereign immunity and should be liberally construed." FDIC v. Meyer, 114 S. Ct. 996, 1003 (1994).

"federal agencies launched into commercial world with power to "sue and be sued" are not entitled to sovereign immunity." Loeffler v. Frank, 486 U.S. 549, 554-55 (1988).

F. Florida Statutes Waived any Immunity CPIC had!

Section §624.155 & §627.351(6), F. of Florida Statutes Waives any Immunity CPIC had, if it ever had any! [Doc 01, Pg 13-14, #46] [Doc 28, Pg 8. #16; Pg 19, # 66 & 68] [Doc 30, Pg 14-15, # 26-28] CPIC's willful and malicious actions and inactions rises to an Intentional Tortious Cause-of-Action with available Punitive Damages. Section 624.155 of Florida Statutes imposes a legal duty upon insurers to act in good faith towards their insured, and willful breach of that duty is a tort. Bad faith conduct, such as actions and inactions committed by CPIC, are excepted from CPIC's limited grant of statutory immunity or immunity is waived entirely. [Doc 28, Pg 16, #41] CPIC's lawyer labeled Fla. Stat. § 627.351(6)(s)1with this prefix" "CITIZENS' enabling statute enumerates five instances in which the Florida legislature has waived CITIZENS immunity from suit in state court:" there is no such prefix that exists in the statute and it explicitly does not say "waived CITIZENS immunity from suit in state court". And not one of those exceptions states that it

is limited to the sole jurisdiction of Florida State Courts.

G. CPIC Entering into Contracts in Commerce Waived Immunity!
[Doc 12, Pg 21, # 7C] [Doc 20, Pg 13, # 9(12)] [Doc 28, Pg 8-9, #17-18][Doc 30, Pg 20-22, #35-37] CPIC waived immunity in two ways.

First, by entering into a valid commercial contract, CPIC waived any governmental immunity as to Causes-of-Action under contract. CPIC agreed to be sued for a breach of its contractual obligations.

"8. Release: ... this release is not intended to, nor does it apply to, any obligations to perform under this Agreement." [EA] Non-Insurance Policy, 2nd Contract with CPIC of August 8, 2014. [Doc 20, Exhibit A, Page 16, #8]

"10. Enforcement. Nothing in this Agreement shall be construed to waive the INSUREDS', CITIZENS', or the LAW FIRMS' right to bring an action to enforce its terms." [EA] Non-Insurance Policy, 2nd Contract with CPIC of August 8, 2014. [Doc 20, Exhibit A, Page 19, #10]

CPIC is not immune from breach of contract lawsuits related to their proprietary, non-governmental acts. Simply by alleging that CPIC had entered into a valid contract, Brown's Complaint effectively asserted that CPIC waived immunity as to actions surrounding the commercial contract.

Second, CPIC by entering the law of commerce and entering into a Contract, ironically titled "Settlement Agreement", CPIC impliedly waived any right to claim sovereign immunity against suit.

"The United States, when they contract with their citizens, are controlled by the same laws that govern the citizen in that behalf");(explaining that when the United States "comes down from its position of sovereignty, and enters the domain of commerce, it submits itself to the same laws that govern individuals there")". Cooke v. United States, 91 U.S. 389, 398 (1875) [EA]

"*States and cities, when they borrow money and contract to repay it with interest, are not acting as sovereignties. They come down to the level of ordinary individuals. Their contracts have the same meaning as that of similar contracts between private persons.*" Murray v. City of Charleston, 96 U.S. 432 (1877) [EA]

CPIC entered the commercial arena when, instead of settling a claim, were sued in Court and entered into a Commercial Contract with Brown, thereby forfeiting any Sovereign Immunity it might have had. Brown did not sue CPIC on a claim of Insurance, Brown sued CPIC on a Commercial Contract outside of the Insurance Claim. The Settlement Agreement refers to a settlement of a Lawsuit, not a settlement of an insurance claim, there is a big difference.

H. Participating in Federal Programs by the State Waived CPIC's Immunity!

Participating in Federal Programs subjects Florida and CPIC to Federal Jurisdiction thus abrogating any state immunity for suits. Participation in a federal program is even a stronger indication of a state's consent to be sued in federal courts. [Doc 55, Pg 10, #12(13)] Examples:

"Florida got $615 million in federal relief for property damage from Hurricane Irma & etc. But the funds could disappear quickly once the state Department of Economic Opportunity starts to distribute them." Advisory-Legal-Opinion- AGO-2002-21 [EA]

*"The corporation [CPIC] was structured to meet the requirements of the Federal Internal Revenue Service so that its income would be exempt from federal income taxation and its bonds would be tax-free."*Advisory-Legal- Opinion-AGO-2002-21 [EA]

Spending Clause "abrogation" is more accurately described as a state's voluntary waiver of its sovereign immunity in exchange for some federal financial incentive. Receiving federal relief on property damage is a gift. Likewise, receiving an ongoing gift of being exempted from Federal Taxation on its bonds is a gift to CPIC.

I. CPIC's Participating in Interstate Commerce Waives Immunity!

CPIC's operation of a Mutual Property Insurance business is "proprietary" and competitive in nature and not governmental in character. Florida, being a haven for second homes, has temporary residents, part-time residents and visitors from other states

that own property in Florida. It is common knowledge that CPIC sells property insurance to non-citizens and non-residents of Florida. This activity is interstate commerce. Selling to citizens of other states is interstate commerce because Insurance Contracts are owned by the non-citizens of Florida. CPIC conducts Interstate Commerce. [Doc 28, Pg 10, #20] [Doc 30, Pg 18, # 31] Regulation of channels of interstate commerce is at the heart of Congress's power under the Commerce Clause, and operating a property insurance company is a sufficiently risky business that entities that are immune from suit should not be allowed to engage in it. So prohibiting state operation of interstate insurance should be within Congress's commerce power. CPIC voluntarily subordinated its sovereignty, if it ever had any, in this matter by issuing policies to citizens of other states, and thereby agreed to comply with the conditions imposed by the Federal Government on Interstate Commerce.

RELATED ISSUES VI-X

VI. Brown's Amended Complaints Were Not "Shotguns"!

The District Court wrongfully labeled Brown's Complaint as a shotgun. Brown's Complaints [Doc 01 & 20] were listings of multiple valid Causes-of-Action. Brown filed a Motion to add additional Causes-of-Action [Doc 51] after studying laws. Brown's Amended Complaint was accepted by the Court without objection. [Doc 22] District Court refused to act on Motion To Add Additional Causes-of-Action! [Doc 01, 14, 20, 22] [Doc 17, Pg 3-5, # C(1-

3)[Doc 28. Pg 1-4, #2-6] [Doc 51, Pg all] A shotgun complaint is a technicality, Pro Se litigants are not experts in legal writings.
Because Brown is a pro se litigant:

"courts must construe his pleadings liberally and apply a less stringent standard than that which is applicable to attorneys". Whitney v. New Mexico, 113 F.3d 1170, 1173 (10th Cir. 1997).

"Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers." Jenkins v. McKeithen, 395 U.S. 411, 421 (1959); Pucket v. Cox, 456 2nd 233 [EA]

"Where a plaintiff pleads pro se in a suit for protection of civil rights, the Court should endeavor to construe Plaintiff's Pleadings without regard to technicalities." Picking v. Pennsylvania Railway, 151 F.2d. 240, Third Circuit Court of Appeals [EA]

"Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment." Maty v. Grasselli Chemical Co., 303 U.S. 197 (1938) [EA]

"Following the simple guide of rule 8(f) that all pleadings shall be so construed as to do substantial justice"... "The federal rules reject the approach that

pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." The court also cited Rule 8(f) FRCP, which holds that all pleadings shall be construed to do substantial justice. Conley v. Gibson, 355 U.S. 41 at 48 (1957) [EA]

"*... the right to file a lawsuit pro se is one of the most important rights under the constitution and laws.*" Elmore v. McCammon (1986) 640 F. Supp. 905.

The Supreme Court explained that a complaint need only "*give defendant fair notice of what Case the plaintiff's claim is and the grounds upon which it rests.*" Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002); accord Atchison, Topeka & Santa Fe Ry. v. Buell, 480 U.S. 557, 568 n.15 (1987) (*under Federal Rule 8, claimant has "no duty to set out all of the relevant facts in his complaint"*). [EA]

"*Specific facts are not necessary in a Complaint; instead, the statement need only 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.*" Epos Tech., 636 F. Supp.2d 57, 63 (D.D.C. 2009) (quoting Bell Atlantic v. Twombly, 550 U.S. 544, 555 (2007)). *Thus, the Federal Rules embody "notice pleading" and require only a concise statement of the claim, rather than evidentiary facts. Accordingly, Defendants' Motion would be considered properly filed only "where a plaintiff's complaint is 'unintelligab[le] (sic),' not*

where a complaint suffers for 'lack of detail." Epos Tech., 636 F. Supp. 2d at 63. [EA]

"*Indeed, courts have found that if the information sought by the motion is obtainable through discovery, the motion should be denied.*" Towers Tenant Ass'n v. Towers Ltd. P'ship, 563 F. Supp. 566, 569 (D.D.C. 1983) (*denying motion for a more definite statement because details such as "dates, times, names and places" are "the central object of discovery, and need not be pleaded*"). [EA]

"*The Supreme Court has a "preference for common sense inquiries over formalism * * *.*" United States v. Williams, 115 S. Ct. 1611, 1618 (1995). [EA]

"*At the pleading stage, plaintiffs' burden "of alleging that their injury is 'fairly traceable'" to the defendant's conduct is "relatively modest.*" Bennett v. Spear, 117 S. Ct. 1154, 1165 (1997).

Brown should not be limited to a certain number of Causes-of-Action. [Doc 28, Pg 13-15, #27-30][Doc 51, Pg 2-4, #4-6; Pg 9-10, #12]

"*Certain wrongs affect more than a single right, and, accordingly, can implicate more than one of the Constitution's commands.*" Soldal v. Cook County, 506 U.S. 56. [EA]

"*the Supreme Court has time and again considered multiple constitutional claims based on the same facts.*" & "*Put simply, that Presley may also have a claim under the Fifth Amendment's Takings Clause does not bar her from bringing a Fourth*

Amendment seizure claim." Rumber v. Dist Of Columbia US Ct Appl DDC 2007. [EA]

"*the due process clause cannot be limited by other constitutional rights.*" Planned Parenthood of Southeastern Pa., 505 U.S. at 848. [EA]

"*Although First English held that states must provide a compensatory remedy for regulatory takings that have occurred, it did not hold that plaintiffs are barred from seeking other forms of relief.*" First English, 482 U.S. 304, 321 (1987). [EA]

VII. All Discovery Requests Were Denied By District Court!

[Doc 36, 52,55, 56, 57] CPIC refused to participate with Brown in supplying requested discovery.[Doc 23, Pg 3-4, #4] The District Court denied all Brown's attempts for discovery. [Doc 57, Pg 3-4, #3] Brown requested Discovery in the following: [Doc 01, Pg 26-27, #71; Pg 96, #Relief 1][Doc 20, Pg 49, #Relief 2 (Liberal Discovery)] [Doc 23, Pg 2-5 , #1,3,4,6, Relief 1] [Doc 28, Pg 2-4, #4,5, 6; Pg 7-8, #14; Pg 13-14, #27; Pg 18, #54; Pg 19, #68] [Doc 30, Pg 10-13, #23; Pg 54, #87][Doc 36, Pg all][Doc 41, Pg 2-3, #4; Pg 3-4, #5; Pg 5, #Relief 3] [Doc 43, Pg 3, #9; Pg 4, #Relief 3][Doc 51, Pg 3-4, #6; Pg 11-13, #Relief 2-7][Doc 52, Pg all; Pg 16, #Relief 1-4] [Doc 54, Pg all] [Doc 55, Pg all; Pg 16, #Relief 3] [Doc 57, Pg All]

A. CPIC Violate Fed. R. Civ. P. 26(g)(1)

District Court allowed CPIC to violate Fed. R. Civ. P. 26(g)(1). [Doc 57, Pg 8, #12]

Failure by CPIC to particularize their objections to Brown's discovery requests suggested a violation of Fed. R. Civ. P. 26(g)(1) failure to conduct a "reasonable inquiry" before objecting to an interrogatory or document request.

B. Discovery About CPIC

Discovery Request Documents were personally handed to and accepted by CPIC's attorney on October 30, 2019. [Doc 35, Pg 2, #3(4)]CPIC refused to provide any information pursuant to Interrogatories and Request for Documents [Doc 40]. All Court Discovery requests made by Brown to compel answers to Interrogatories and Request for Documents were denied by District Court!

"Accordingly, Plaintiff Roger Brown's Motion to Compel Defendant CPIC to Answer Interrogatories and Produce Documents (Doc. 36), and Motion to Compel Discovery (Doc. 52) are denied without prejudice. ORDERED in Tampa, Florida, on February 20, 2020." [Doc 53][EA]

C. Discovery About Unknown Employees of CPIC

CPIC refused to provide any information about the Unknown Employees. All Court Discovery requests to compel CPIC about Unknown Employees were denied by District Court [Doc 26]! How could Brown meet deadlines established by the Court to identify the Unknown Employees [other Defendants] when the Court itself denied Brown the ability to discover them? Dismissal was appropriate only if Brown did not want to name the other Defendants, but Brown was denied access by the District Court via discovery

in which to identify the other Defendants. No discovery, no way to identify the other defendants.[Doc 21, 26, 53][Doc 35, Pg 5, #9D]

[Doc 52, Pg 15, #7] [Doc 54, Pg 8, #3] EVEN IF CPIC had some kind of immunity, active actors behind CPIC have acted wrongfully and unconstitutionally and caused harm to Brown and others are not immune. EVEN IF CPIC was dismissed, active actors should not have been, thus CPIC should had to provide Discovery to disclose the identity and actions of those actors they were hiding. All present and future Causes-of-Action are still applicable against yet unidentified active actors labeled thus far as Unknown Employees of Citizens Property Insurance Corporation. Discovery was important regardless of CPIC's issues.

In Discovery, all employees who violated fiduciary duties to Brown and acted in conspiracy of delaying and denying Brown's claim and Contract #2 payments could be determined.

"*Bad faith by an insurer is a state of mind indicated by acts and circumstances and is provable by circumstantial as well as direct evidence.*" Truck Ins. Exchange v. Prairie Framing, LLC, 162 S.W.3d 64 (Mo. Ct. App. W.D. 2005) [EA]

Motion for Partial Discovery of just the Unknown Employees of CPIC was made [Doc 54 Pg all]. District Court never granted the Motion. District Court ordered Brown to operate under a deadline of December 25, 2019 in which to identify additional Unknown Defendants. Brown did not meet deadline

because CPIC refused to comply with Discovery. [Doc 52 Pg12-13, #5] [Doc 21 & 26] Brown was denied by District Court Order, and CPIC, his due process right to discover the identity of the persons to be included as Defendants within this lawsuit. CPIC's claim of immunity should not bar Brown from obtaining discovery from the witness named Citizens Property Insurance Corporation. [Doc 57, Pg 4-5, #4] Assuming CPIC had 11th Amendment immunity, did immunity extend to prevent answering questions as a witness?

VIII. Brown's Ex Parte Young Allegations Were Obstructed.

Brown wanted partial discovery from CPIC to discover the Unknown Employees who were violating his contract and constitutional rights, but District Court refused. Brown could not amend his complaint and add additional defendants because the District Court's denial of discovery hide the actors. Brown was prevented from filing Ex Parte Young allegations against the actors. [Doc 28, Pg 7-8, #14] Brown could not identify any of the Defendants because they were hidden by CPIC, but they could have been revealed if the District Court had allowed discovery. [Docs 21, 26, 53] After discovery Brown could have identified which defendants were responsible for which acts. [Doc 54 Pg all] EVEN IF CPIC had some kind of immunity, the active actors behind CPIC who have acted wrongfully and unconstitutionally and caused harm to Brown and others are not immune. Thus Discovery was important regardless of CPIC's issues.

[Doc 56] "ENDORSED ORDER denying [54] Motion to Compel for the reasons stated in [53] Order. Signed by Magistrate Judge Sean P. Flynn on 3/2/2020. (Flynn, Sean)". [EA]

When an individual deals with an insurance company they never see a person, instead they only see paperwork. Even when a claim is filed there may be only a select few actual persons that a claimant may see. Everything is hidden behind secret doors. The actual responsible persons that commit the wrongful behaviors are insulated from sight by paperwork, lawyers, and lesser employees. And that is the reason CPIC did not want to provide discovery. They did not want to reveal the real people responsible for the egregious behaviors.

Ex Parte Young authorizes injunctions against CPIC's employees for ongoing violations.

"Since Ex parte Young, 209 US. 123 [28 S.Ct. 441 , 52 L.Ed. 714] (1908), we said, it has been settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law." Scheuer, 416 US., at 237, 94 S.Ct., at 1687.

The U.S. Supreme Court stated that "*when a state officer acts under a state law in a manner violative of the Federal Constitution, he comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual*

conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." Scheuer v. Rhodes, 416 U.S. 232, 94 S. Ct. 1683, 1687 (1974) [EA]

"*Eleventh Amendment does not protect state officials from claims for prospective relief when it is alleged that state officials acted in violation of federal law.*" Warnock v. Pecos County, Texas., 88 F3d 341 (5th Cir. 1996)

"*There is a general rule that a ministerial officer who acts wrongfully, although in good faith, is nevertheless liable in a civil action and cannot claim the immunity of the sovereign.*" Cooper v. O'Conner, 99 F.2d 133 [EA]

Brown, after discovery, could have amended the Amended Complaint to include the individuals responsible and would have sought Injunctive Relief via Ex Parte Young against the identified state officials for ongoing acts under color of law who were applying and enforcing unconstitutional laws. [Doc 30, Pg 10-13, #23]

IX. Brown Was Denied Due Process

The District Court denied Brown his Federal and State Constitutional due process rights to sue for Taking, Impairment of Contract, Ex Post Facto Prohibition, Limits to Punitive Damages, Pro Se Fees, and Civil Conspiracy!

Brown was denied his Constitutional Due Process Rights for discovery and to sue CPIC for Bad Faith.

[Brown was denied Due Process and Equal Protection rights from suing CPIC in State Court Case because of an unconstitutional state law impairing contracts][Doc 20, Pg 19, #38; Pg 20, #44]

"contract rights are property that may not be taken by the government without just compensation under the Fifth Amendment." Lynch v. United States 292 US 571, 579.] [EA]

"Contracts between individuals or corporations are impaired within the meaning of the Constitution (article 1, 10, cl. 1) whenever the right to enforce them by legal process is taken away or materially lessened". Lynch v. United States 292 US 571, 579. [EA]

Contracts are "inviolable," and that it is irrelevant whether a legislature's attempt to abrogate a contract is "reasonable," whether the abrogation is "substantial," and whether the abrogation is for a good reason. Under the Contract Clause as originally understood, and as applied by this Court for hundreds of years, there can be no doubt that Florida's CPIC bad faith statute impermissibly impairs the obligations of contracts.

States surrendered a portion of their sovereign immunity when the 14th Amendment was adopted. §5 is different because it was meant as a limit on states and that the 14th Amendment modifies the previously enacted 11th Amendment. Therefore, Congress may authorize private suits against non-consenting states to enforce constitutional guarantees of the 14th Amendment. [Doc 30, Pg 10, #22] Brown was denied Due Process but cited them

here: [Doc 01, Pg 46-47, #83; Pg 47-49, #84,85; Pg 86, #152; Pg 87, #156] [Doc 20 Pg 1-2, #1; Pg 6-7, #9(3); Pg 7, #9(5); Pg 8, #9(6); Pg 15, #17; Pg 20, #44; Pg 28, #69] [Doc 12, Pg 9, #2; Pg 23-24, #8][Doc 28, Pg 11-12, #25; Pg12-13, #26; Pg19, #65] [Doc 30, Pg 23-27, #40-47; Pg 38-39, #67] [Doc 35, Pg 4, #8C] [Doc 51, Pg 4, #7; Pg 6-7, #10] [Doc 57, Pg 1-2, #1; Pg 4-5, #4; Pg 6-7 8(b); Pg 7, #9; Pg 10, #17; Pg 11, # Relief 1,2]

X. Brown's Motions For Declaratory Judgment Were Denied.

Brown raised multiple Federal and State Constitutional issues in both his Original [Doc 01] and his Amended Complaint [Doc 20] plus in two separate Motions for Declaratory Judgments [Doc 12 & 30]. Brown raised issues in Immunity, Due Process, Impairment of Contract, Taking, Ex Post Facto Prohibition, Limits to Punitive Damages, Pro Se Fees, and Civil Conspiracy. District Court never addressed these issues!

"A declaratory judgment is appropriate when it will "terminate the controversy" giving rise to the proceeding." Quoting a part of Rule 57.

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. ...It is emphatically the province and duty of the judicial department to say what the law is." Chief Justice Marshall in Marbury v Madison 5 U.S. (1 Cranch) 137 (1803) [EA]

CONCLUSION

Brown sued CPIC twice over commercial contracts and never over a state governmental function.

District Court's errors were prejudicial because it did not properly considered and interpret all the facts, authorities, motions, and arguments. The Court should have ruled that the 11th Amendment did not apply to CPIC.

Brown Requests Relief from this Appeals Court to:

1. Decide, in the affirmative, all questions listed in the STATEMENT OF THE ISSUES,
2. Answer all the legal questions in Documents 12, 20 & 30,
3. "Publish" this 11th Circuit Court of Appeal's decision,
4. Reinstate the District Court Case with the above rulings.

And finally:

"There is, no doubt, some truth to Learned Hand's comment that a lawsuit should be 'dread[ed] . . . beyond almost anything else short of sickness and death." Association of the Bar of the City of New York, Lectures on Legal Topics 105 (1926)." Clinton v. Jones, 117 S. Ct. 1636, 1650 n.40 (1997).

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G. Affidavit All Appendix items are actual and true copies of the Originals

I swear under penalty of perjury that the documents here in this Appendix to the Petition are accurate and true. I have reformatted the documents without additions. The documents were reformatted to the

booklet format. Otherwise these documents are in all respects valid, true, and accurate.
Sign: /s/ Roger Brown, Petitioner
Roger Brown, Pro Se [Non-Lawyer]
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