UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 09-60796-CIV-ALTONAGA/Brown

RICHMOND MANOR APTS., INC.,
et al.,

Plaintiffs,

vs.

CERTAIN UNDERWRITERS AT LLOYD'S LONDON, and **LLOYD'S UNDERWRITERS AT LONDON**,

Defendants.
_____/

ORDER

THIS CAUSE came before the Court on Defendants, Certain Underwriters at Lloyd's London ("Certain Underwriters") and Lloyd's Underwriters at London's ("Lloyd's Underwriters['s]") Motion to Dismiss (the "Motion") [ECF No. 174], filed July 23, 2010. The Court has carefully considered the parties' written submissions and applicable law.

I. BACKGROUND

Following the Court's grant of leave to amend to add additional plaintiffs and change the class definition (*see* Apr. 16, 2010 Order [ECF No. 139]), Plaintiffs, Richmond Manor Apts., Inc. ("Richmond Manor"), The Gurkin Family Limited Partnership ("Gurkin"), Intracoastal Terrace Condominium Assn, Inc. ("Intracoastal"), and Serena Vista Condominium Assn Inc. ("Serena Vista") (collectively, the "Plaintiffs"), filed a Fifth Amended Class Action Complaint [ECF No. 141], on April 26, 2010. That same day summary judgment was granted against the original Plaintiffs, GB, L.L.C. d/b/a Mamma Nunzia's Restaurant ("GB LLC") and Kenland Pointe Condo

IV Assn, Inc. ("Kenland"), for claims they had asserted in the Fourth Amended Class Action Complaint [ECF No. 40].

The operative pleading alleges Lloyd's of London is a franchise created to facilitate the sale of property and casualty insurance to Florida persons and/or entities like the Plaintiffs. (*See* Fifth Am. Class Act. Compl. ("FAC") ¶ 6). Franchisees known as "Names" form "Syndicates" to underwrite insurance policies, including the policies issued to Plaintiffs. (*See id.*). The Syndicates are managed by Managing Agents. (*See id.*) Certain Underwriters consist of the Names and/or Syndicates that underwrite and provide property and casualty insurance for policies which were delivered in the State of Florida for the proposed class period. (*See id.*). Each of the Syndicates and all of the Names in the Syndicates involved in underwriting policies of insurance during the unknown class period are considered Defendants.[1] (*See id.*).

Lloyd's Underwriters is alleged to be an eligible surplus lines insurer under the laws of Florida, having received its eligibility on October 1, 1998. (*See id.* ¶ 8). Plaintiffs allege it is the only Lloyd's entity eligible to write surplus lines insurance in the State. (*See id.*).

Certain Underwriters provide insurance coverage and issued an insurance policy to Richmond Manor to insure Richmond Manor's property for the period of June 1, 2005 through June 1, 2006. (*See id.* ¶ 10). The Richmond Manor policy states, "We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss." (*Id.* ¶ 12). Certain Underwriters are entitled to reduce the

[1] Certain listed Syndicates are specifically excluded from the Defendant group on representations made by defense counsel that the excluded Syndicates did not write property insurance in Florida or have not had relevant hurricane claims. (*See* FAC ¶ 7).

amount they pay for a claim based on a deductible; the standard all perils deductible is $2,500.00. (*See id.* ¶ 13). A hurricane damaged Richmond Manor's property on June 1, 2006, and in adjusting the claim for damage, Certain Underwriters attempted to use a separate hurricane deductible of 5% of the policy value. (*See id.* ¶¶ 14–15).

Certain Underwriters issued an insurance policy to Gurkin, providing coverage for the period of April 15, 2005 through April 15, 2006. (*See id.* ¶ 16). The Gurkin policy contains the same language pertaining to payment for loss or damage as the Richmond Manor policy. (*See id.* ¶ 18). The standard all perils deductible under the Gurkin policy is $10,000 per location. (*See id.* ¶ 19). However, following two hurricanes on August 25, 2005 and October 10, 2005, Certain Underwriters attempted to utilize a separate hurricane deductible of 5% of the policy value for each property. (See *id.* ¶¶ 20–21).

Certain Underwriters issued an insurance policy to Intracoastal to insure property for the period of November 19, 2004 through November 19, 2005. (*See id.* ¶ 22). The Intracoastal policy was underwritten through two contracts managed through several Managing Agents. (*See id.* ¶ 23). The Intracoastal policy also contains the same provision pertaining to payment for loss or damage as the Richmond Manor policy. (*See id.* ¶ 25). Certain Underwriters are entitled to reduce the amount they pay for a claim based on a deductible; the standard all perils deductible on the Intracoastal policy is $2,500.00. (*See id.* ¶ 26). A hurricane damaged Intracoastal's property on October 24, 2005, and in adjusting the claim for damage, Certain Underwriters attempted to use a separate hurricane deductible of $70,000.00. (*See id.* ¶¶ 27–28).

Certain Underwriters also issued an insurance policy to Serena Vista, providing coverage for the period of February 7, 2005 through February 7, 2006. (*See id.* ¶ 29). The Serena Vista policy contains the same language as the Richmond Manor policy regarding payment for loss or damage. (*See id.* ¶ 31). The standard all perils deductible under the Serena Vista policy is $2,500.00 per location. (*See id.* ¶ 32). However, following a hurricane on October 24, 2005, Certain Underwriters attempted to utilize a separate hurricane deductible in the amount of $53,400.00. (*See id.* ¶¶ 33–34).

Section 627.701(4)(a) of the Florida Statutes requires that property insurance policies include in 18-point or larger boldface type the phrase, "THIS POLICY CONTAINS A SEPARATE HURRICANE DEDUCTIBLE FOR HURRICANE LOSSES, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU." (*Id.* ¶ 35). The failure to include this statement renders a separate hurricane deductible void. (*See id.).* Most of the property insurance policies issued by Defendants fail to comply with section 627.701(4)(a), and thus Defendants' use of the separate hurricane deductible as to any hurricane claim is wrongful. (*See id.* ¶ 37).

Florida Statute section 627.701(2) provides that "[u]nless the office determines that the deductible provision is clear and unambiguous, a property insurer may not issue an insurance policy or contract covering real property in this state which contains a deductible provision that: (a) applies solely to hurricane losses; (b) states the deductible as a percentage rather than as a specific amount of money." Defendants failed to have the office (Office of Insurance Regulation, or "OIR") determine the separate hurricane percentage deductible was clear and unambiguous, and so Defendants were not permitted to use policies with percentage deductibles. (*See id.* ¶ 38). Defendants also failed to comply with section 627.410 of the Florida Statutes, which requires an

insurance company to submit to the OIR for approval any forms it intends to use, including the separate hurricane percentage deductible. (*See id.* ¶ 39). Plaintiffs allege Defendants engage in these wrongful acts as a general business practice. (*See id.* ¶ 37).

Certain Underwriters are a closed group of Names and Syndicates that operate within the Lloyd's market. (*See id.* ¶ 40). They all operate under a set of identical or substantially similar operating procedures and use the same or similar forms and practices in selling insurance products in the State. (*See id.*). None of the Syndicates or Names are authorized to write insurance in Florida or are eligible surplus lines insurers. (*See id.* ¶ 42).

Plaintiffs seek to represent a class defined as: "all CERTAIN UNDERWRITERS and/or LLOYDS insureds who have submitted claims for hurricane damage on a policy that completely omits the required language of [§] 627.701 where the insurance policy issued by CERTAIN UNDERWRITERS and/or LLOYDS, nevertheless, contains a separate hurricane deductible applicable to hurricane losses." (FAC ¶ 44). Plaintiffs allege they and the class have been harmed in the same way based on Defendants' scheme not to follow Florida law. (*See id.* ¶ 41).

Count I seeks declaratory relief, specifically a declaration that Defendants have failed to comply with Florida Statute sections 627.701(4)(a) (mandating policy language on hurricane deductibles), 627.701(2) (barring percentage-based hurricane deductibles), and 627.410 (requiring OIR approval of policy forms). (*See* FAC ¶¶ 51–55). Count II alleges breach of contract in that Certain Underwriters adjusted or attempted to adjust Plaintiffs' losses resulting from hurricanes using deductibles derived by percentages rather than the standard all perils deductibles pursuant to the insurance policies. (*See id.* ¶¶ 56–62).

II. ANALYSIS

Defendants assert Plaintiffs' two claims fail for several reasons. First, they maintain the Court lacks subject matter jurisdiction because the original representative Plaintiffs in the Fourth Amended Complaint lacked standing, and therefore they should not have been granted leave to amend. (*See* Mot. 15–17). Second, Defendants argue that during the Florida 2009 legislative session, Florida Statute section 626.913(4) was added to clarify that "the provisions of chapter 627 do not apply to surplus lines insurance," except with respect to lawsuits filed before May 15, 2009, and the present pleading constitutes the filing of a new lawsuit not filed within the statutory "carve-out" period. (*See id.* 4–6). In particular, Defendants argue section 626.913(4) bars each claim because Plaintiffs' Fifth Amended Complaint, which was filed after the statutorily prescribed cut-off date for the applicability of chapter 627 requirements on surplus line insurers, does not relate back to the filing date of the earlier complaints. (*See id.* 7–14). Third, Defendants argue that regardless of the explicit statutory bar of section 626.913(4), the requirements of chapter 627 do not apply to surplus lines insurance, and Plaintiffs otherwise fail to state a claim for relief, as the statutes do not provide a private cause of action. (*See id.* 17–27). As the Court has previously addressed and rejected Defendants' contentions concerning lack of subject matter jurisdiction (*see* June 23, 2010 Order [ECF No. 160]) as well as Defendants' argument that Plaintiffs fail to state a claim for relief,[2]

[2] The Court previously determined chapter 627 applies to surplus lines insurers such as Defendants. (*See* October 8, 2009 Order 7–18 [ECF No. 81]). The Court also considered whether the provisions in chapter 627 contain a civil damages remedy and private right of action. (*See id.* 18–19). As Plaintiffs correctly note in their Response [ECF No. 199], the Court concluded "the question of what remedy exists, if any, for a violation of sections 627.410(1) and 627.701 is unresolved." (October 8, 2009 Order 19). Because the Florida Supreme Court may provide clarification with respect to this question as to section 627.701, *see Chalfonte Condo. Apt. Ass'n v. QBE Ins. Corp.*, 561 F.3d 1267, 1273 (11th Cir. 2009) (certifying question to Florida Supreme Court), the more prudent course continues to be to await that court's

the only argument addressed in this Order is the second one regarding the effect of section 626.913(4) and the relation back doctrine.

Defendants assert Plaintiffs' Fifth Amended Complaint should be dismissed because the claims are statutorily barred by section 626.913(4). Under section 626.913(4), "Except as may be specifically stated to apply to surplus lines insurers, the provisions of chapter 627 do not apply to surplus lines insurance authorized under ss. 626.913–626.937, the Surplus Lines Law." Without more, the statute would appear to foreclose Plaintiffs' claims arising under chapter 627. However, the Florida Legislature also included a carve-out period which suspends the application of section 626.913(4) "with respect to lawsuits that are filed on or before May 15, 2009." 2009 FLA. LAWS 166 § 7 (C.S.H.B. 853). Dismissal of Plaintiffs' claims therefore turns on whether Plaintiffs' Fifth Amended Complaint constitutes a new lawsuit filed after May 15, 2009 or relates back to the complaints filed before May 15, 2009. For the following reasons, the Court determines the Fifth Amended Complaint relates back, and therefore Plaintiffs' claims are not statutorily barred.

Generally, in a diversity case, the Court applies federal procedural law and state substantive law. *See Esfeld v. Costa Crociere, S.P.A.*, 289 F.3d 1300, 1306 (11th Cir. 2002) (citations omitted). But "Rule 15(c)(1) [of the Federal Rules of Civil Procedure] allows federal courts sitting in diversity to apply relation-back rules of state law where, as here, state law provides the statute of limitations for the action." *Saxton v. ACF Indus., Inc.*, 254 F.3d 959, 963 (11th Cir. 2001) (citations omitted). Federal jurisdiction in this case is based on the diversity of citizenship of the parties, and Florida law

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resolution of the issue and examine what effect, if any, it has with respect to remedies for section 627.410(1) violations.

provides the applicable statutes of limitations for Plaintiffs' claims.[3] Nevertheless, "[t]he state's relation-back rules are only applied if more liberal than the federal rule." *Hughes v. Am. Tripoli, Inc.*, No. 2:04-cv-485-FtM-29DNF, 2007 WL 2010786, at *2 (M.D. Fla. July 6, 2007) (citing FED. R. CIV. P. 15 advisory committee's note to the 1991 Amendments). The Court considers both the state and federal relation-back rules.

Under Florida Rule of Civil Procedure 1.190(c), an amendment relates back to the date of the original complaint, "[w]hen the claim or defense asserted in the amended pleading arose out of the *conduct, transaction, or occurrence* set forth or attempted to be set forth in the original pleading . . . ." FLA. R. CIV. P. 1.190(c) (emphasis added). The Rule does not address the addition of a new party, "but '[g]enerally, the addition of a new party to an action will not relate back to the original complaint.'" *Lathrop v. Dillard's, Inc.*, No. 3:08-cv-212/RS/MD, 2008 WL 5111299, at *2 (N.D. Fla. Dec. 4, 2008) (quoting *Schwartz ex rel. Schwartz v. Wilt Chamberlain's of Boca Raton, Ltd.*, 725 So. 2d 451, 453 (Fla. 4th DCA 1999)). An exception exists where "'the new and former parties have an identity of interest so as to not prejudice the opponent by the addition.'" *Id.* (quoting *City of Miami v. Cisneros*, 662 So. 2d 1272, 1274 (Fla. 3d DCA 1995) (citations omitted)); *see also C.H. v. Whitney*, 987 So. 2d 96, 99–100 (Fla. 5th DCA 2008) (summarizing cases). Furthermore, "[a]n amendment to plaintiff's complaint changing the parties to the suit so long as it does not introduce a new cause of action or make a new demand or substantially change the cause of action but merely restates in a different form the cause of action originally pleaded relates back to the commencement

[3] *See* FLA. STAT. § 95.11(3)(p) (establishing limitation period for declaratory judgment claims); FLA. STAT. § 95.11(2)(b) (establishing limitation period for breach of contract claims). Additionally, the carve-out period in operation in the present case is also based on Florida law. *See* 2009 FLA. LAWS 166 § 7.

of the action so as to avoid operation of the statute of limitations . . . ." *Roger Dean Chevrolet, Inc. v. Lashley*, 580 So. 2d 171, 173 (Fla. 4th DCA 1991). In Florida, "[t]he relation back doctrine is to be applied liberally." *C.H.*, 987 So. 2d at 99 (citation omitted).

The Defendants maintain relation back is not proper here because there is insufficient identity of interest between the new and old Plaintiffs. (*See* Mot. 9–10). The Defendants suggest identity of interest requires corporate or operational entanglement such as operating out of a single office, sharing a single telephone line, having overlapping officers and directors, sharing consolidated financial statements and registration statements, sharing the same attorney, and receiving service of process through the same individual at the same location. (*See* Reply 4 [ECF No. 208] (citing *Williams v. Avery Dev. Co. – Boca Raton*, 910 So. 2d 851, 853 (Fla. 4th DCA 2005) (quoting *Schwartz*, 725 So. 2d at 453))). However, the identity of interest standard is not so narrow. While the *Schwartz* factors are helpful in determining whether an identity of interest exists between two parties, the true touchstone of whether there is sufficient identity of interest between a new plaintiff and a former plaintiff is notice — "'whether the defendant knew or should have known of the existence and involvement of the new plaintiff.'" *R.A. Jones & Sons, Inc. v. Holman,* 470 So. 2d 60, 68–69 (Fla. 3d DCA 1985) (quoting *Leachman v. Beech Aircraft Corp.*, 694 F.2d 1301, 1309 (D.C. Cir. 1982)); *see also Cisneros*, 662 So. 2d at 1274 (addition of parents as plaintiffs on morning of trial in minor son's personal injury action was proper to allow parents to claim medical expenses for son's injuries where defendant had long been aware of the expenses and even though statute of limitations would otherwise bar parents' claim). And "'when it comes to a late effort to introduce a new party . . . [n]ot only must the adversary have had notice about the operational facts, but it must

have had fair notice that a legal claim existed in and was in effect being asserted by, the party belatedly brought in.'" *R.A. Jones & Sons*, 470 So. 2d at 67 (quoting *Williams v. United States*, 405 F.2d 234, 238 (5th Cir. 1968)) (emphasis omitted). Therefore, an identity of interest analysis is not necessarily dependent upon a showing of corporate or operational entanglement, but rather turns on whether the "'new plaintiff was in effect involved in [the proceedings] unofficially from an early stage.'" *Id.* at 68 (quoting *Leachman*, 694 F.2d at 1309) (internal quotation marks omitted).

That the named Plaintiffs in this action have always sought to represent a class does bear upon the identity of interest analysis. *Okeelanta Corp. v. Bygrave*, 660 So. 2d 743 (Fla. 4th DCA 1995), is instructive. There, after the court rejected individual plaintiffs as representatives of a class seeking unpaid wages and new plaintiffs were permitted to file an amended complaint after the statute of limitations had run, the defendants challenged the trial court's determination that the statute of limitations did not bar the class action because relation back applied. *See id.* at 750. In affirming, the *Okeelanta* court stated, "We think the liberality of the relation back rule in Florida permits an amendment to a class action lawsuit to substitute alternative class representatives after the trial court's rejection of the initial representative. No new cause of action has been stated, nor different damages requested." *Id.* at 751 (footnote call number omitted).

The original Plaintiff, GB LLC, filed this suit on March 26, 2008, amended the Class Action Complaint on August 22, 2008, and filed a Second Amended Class Action Complaint on May 11, 2009 (*see* Notice of Removal ¶¶ 1, 3 [ECF No. 1]), all during the statutory carve-out period. The Defendants have been on notice of the class-wide claims, in their various formulations, since — at the very latest — the filing of the Second Amended Complaint on May 11, which described "a class

of '[a]ll CERTAIN UNDERWRITERS [sic] insureds who have submitted claims for hurricane damages where CERTAIN UNDERWRITERS has used a separate hurricane deductible or where the policy contained a co-insurance penalty.'" (*Id.* ¶ 5 (quoting Notice of Removal Ex. 1f ("Second Am. Compl.") 5, ¶ 26 [ECF No. 1-7])). While the Court does not suggest that under Florida law an action filed by one plaintiff necessarily provides adequate notice of "'all claims on behalf of all plaintiffs who might someday fall with in [sic] the class definition,'" (Mot. 10 (quoting *Heaphy v. State Farm Mut. Auto. Ins. Co.*, No. C05 5404RBL, 2005 WL 1950244, at *4 (W.D. Wash. Aug. 15, 2005))), on these facts, these three early pleadings filed by GB LLC provided Defendants adequate notice of the present claims because the present claims arise out of the same character of conduct and transactions described in those early pleadings. The claims are essentially the same, albeit presented by different parties under their respective, yet identical, policies issued by the Defendants.

Defendants knew the Plaintiff class included all insureds who submitted claims for hurricane damage on policies containing separate deductibles applicable to hurricane losses and omitting the language prescribed in chapter 627. While the Fifth Amended Complaint arguably expands the putative class definition by including all insureds who have submitted claims for hurricane damage where the policy merely *contains* a separate deductible applicable to hurricane losses (*see* FAC ¶ 44), rather than the earlier class definition that required Defendants to have *used* a separate hurricane deductible (*see* Fourth Am. Compl. ¶ 34), this amendment does not change the outcome of the analysis. The change will not increase potential damages because damages are based on adjustments actually made under the separate hurricane deductible. Moreover, the Defendants knew or should have known how many policies *contained* the separate deductible provisions and how many of those

separate deductible provisions were actually *used* against policyholders. As such, Defendants knew or could have known the present Plaintiffs — as holders of policies containing separate deductibles applicable to hurricane losses and omitting the language prescribed in chapter 627 — were members of the class and could also assert the claims brought by the original Plaintiffs.

Notwithstanding Plaintiffs' individual insurance policies, the separate hurricane deductible provisions in question are identical in each policy, and the policies similarly omit the same provisions Plaintiffs maintain are required by chapter 627. Additionally, the insurance claims filed under the policies all stem from fixed and known instances of hurricane damage. Therefore, the universe of contracts and incidents associated with the putative class in this case is not so large and unknown as to prejudice the Defendants. There is no lack of timely notice of the new Plaintiffs' claims which would subject the Defendants to assembling new evidence, developing new legal theories and tactics, or defending against increased potential liability.

Turning then to the federal rule, "Federal Rule of Civil Procedure 15(c) governs relation back of amendments to pleadings in federal court, and provides several ways in which an amended pleading can relate back to an original pleading."[4] *Saxton*, 254 F.3d at 962. "Though [Rule 15(c)(1)]

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[4] Under Rule 15(c)(1),

> [a]n amendment to a pleading relates back to the date of the original pleading when:
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> * * *
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> (B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out — or attempted to be set out — in the original pleading; or
>
> (C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided

technically references amendments that change the parties against whom claims are asserted, [the Eleventh Circuit] ha[s] previously applied it to situations in which new plaintiffs were added." *Makro Capital of Am., Inc. v. UBS AG*, 543 F.3d 1254, 1259 (11th Cir. 2008) (citing *Cliff v. Payco Gen. Am. Credits, Inc.*, 363 F.3d 1113, 1131-33 (11th Cir. 2004)).[5]

> In the Eleventh Circuit, the standard for determining whether an amendment to add a plaintiff 'relates back' to the filing of the original complaint includes consideration of three elements: (1) whether the amended claim arose out of the same conduct, transaction, or occurrence as in the original pleading; (2) whether the amendment will unduly prejudice the defendant; and (3) whether the original complaint provided adequate notice of the nature of the new proposed class.

Grand Lodge of Pa. v. Peters, 560 F. Supp. 2d 1270, 1273-74 (M.D. Fla. 2008) (citing Fed. R. Civ. P. 15(c)(1)(B); *Cliff*, 363 F.3d at 1131-33; *Reasoner v. All Seasons Pool Serv., Inc.*, No. 6:06-cv-1819-Orl-19DAB, 2007 WL 4326808, at *3 n.5 (M.D. Fla. Dec. 7, 2007); *Hughes*, 2007 WL 2010786, at *2; *Senterfitt v. SunTrust Mortg., Inc.*, 385 F. Supp. 2d 1377, 1380 (S.D. Ga. 2005)).

> by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:
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> > (i) received such notice of the action that it will not be prejudiced in defending on the merits; and
> >
> > (ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

[5] In *Cliff*, the Eleventh Circuit discussed two tests courts have applied to determine whether the claims of a newly-added plaintiff should relate back to the original complaint: the test under former Rule 15(c)(3) and the Ninth Circuit test in *In re Syntex Corp. Sec. Litig.*, 95 F.3d 922, 935 (9th Cir. 1996). *See* 363 F.3d at 1131–32. The Eleventh Circuit declined to specify exactly which test courts should apply. *See id.* at 1132 n.15.

Here, as stated, the claims asserted in the Fifth Amended Complaint are identical to the claims asserted in the Fourth Amended Complaint. Even though the Plaintiffs' claims arise under separate insurance policies, the provisions in all of the policies have always been identical. Additionally, the claimed violations of chapter 627 have not changed. The claims allege the inclusion of separate hurricane deductibles and the omission of cautionary text required by chapter 627 in each of the policies. Moreover, the insurance claims filed in accordance with these policy provisions involve fixed and known instances of hurricane damage. Thus, not only are the claims identical, but Plaintiffs' claims arise out of the same *conduct, transaction or occurrence* set forth or attempted to be set forth in the early complaints. The claims arise out of the Defendants' inclusion or exclusion of certain provisions in their policies and the later application of deductibles following a hurricane. Because the Fifth Amended Complaint merely substitutes representative plaintiffs, it does not constitute the filing of a new suit.

Accordingly, the Fifth Amended Complaint relates back to the filing of the Fourth Amended Complaint under Florida law, and Florida Statute section 626.913(4) does not bar the present claims.

III. CONCLUSION

For the foregoing reasons, it is

ORDERED AND ADJUDGED that Defendants, Certain Underwriters at Lloyd's London and Lloyd's Underwriters at London's Motion to Dismiss **[ECF No. 174]** is **DENIED**.

DONE AND ORDERED in Chambers at Miami, Florida this 18th day of October, 2010.

Cecilia M. Altonaga

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record