

Objection Deadline: August 10, 2022 at 4:00 p.m. (Prevailing Eastern Time)
Hearing Date and Time: August 17, 2022 at 11:00 a.m. (Prevailing Eastern Time)

PILLSBURY WINTHROP SHAW PITTMAN LLP
31 West 52nd Street
New York, NY 10019-6131
Telephone: 212-858-1000
Facsimile: 212-858-1500
Leo T. Crowley
Patrick E. Fitzmaurice
Kwame O. Akuffo

Counsel for GUC Recovery Trustee

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

.....	X	
In re:	:	Chapter 11
	:	
JCK LEGACY COMPANY, <i>et al.</i> ,	:	Case No. 20-10418 (MEW)
	:	
Debtors. ¹	:	(Jointly Administered)
	:	
.....	X	

**GUC RECOVERY TRUSTEE’S MOTION TO ALLOW PROOF OF
CLAIM NO. 2047 FILED BY HERNANDO SANDOVAL, SOLELY
FOR RECOVERY UNDER APPLICABLE INSURANCE**

William A. Brandt, Jr., in his capacity as trustee (the “GUC Recovery Trustee”) of the JCK Legacy Company GUC Recovery Trust (the “**GUC Recovery Trust**”) created under the GUC Recovery Trust Agreement (the “**Trust Agreement**”) and the confirmed *First Amended Joint Chapter 11 Plan of Distribution of JCK Legacy Company and its affiliated Debtors and Debtors in Possession* (the “**Plan**”) [Docket No. 879], by and through undersigned counsel, files this motion (the “**Motion**”) pursuant to section 502 of the Bankruptcy Code and Rule 3001 of the

¹ The Debtors in these chapter 11 cases and the last four characters of each Debtor’s tax identification number are: JCK Legacy Company (0478) and Herald Custom Publishing of Mexico, S. de R.L. de C.V. (SUZ1). The location of the GUC Recovery Trustee’s service address for purposes of these chapter 11 cases is: 110 East 42 Street, Suite 1818 New York, NY 10017.



Federal Rules of Bankruptcy Procedure (“**Bankruptcy Rules**”), for entry of an order, substantially in the form attached as **Exhibit A** (the “**Proposed Order**”).

JURISDICTION

1. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
3. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
4. The predicate for the relief requested herein is section 502 of the Bankruptcy Code and Bankruptcy Rule 3001.

BACKGROUND

A. Overview of Bankruptcy Case

5. On February 13, 2020 (the “**Petition Date**”), The McClatchy Company, a corporation organized under the laws of the state of Delaware, and certain of its affiliates, including The Miami Herald Media Company, the “**Herald**”) (together, the “**Debtors**”), filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The chapter 11 cases have been jointly administered for procedural purposes, and some cases remain pending.

6. On May 21, 2020, the Bankruptcy Court entered an *Order Establishing Bar Dates for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof* (the “**Bar Date Order**”) [Docket No. 485], and set July 10, 2020, at 5:00 p.m. (E.T.), as the deadline for creditors to file proofs of claim against the Debtors.

7. Notice of the Bar Date Order was mailed and also published in *The New York Times* as required by the Bar Date Order. *See* Docket Nos. 485, 513. On September 25, 2020, the Bankruptcy Court entered an order (the “**Confirmation Order**”) confirming the Plan, which became effective on September 30, 2020 (the “**Effective Date**”).

8. The Plan and the Confirmation Order provide for the establishment of the GUC Recovery Trust pursuant to the Trust Agreement on the Effective Date, at which time the GUC Recovery Trustee was appointed to administer the GUC Recovery Trust. Confirmation Order at 11; Trust Agreement, § 2.1; Plan, § 6.20. Under the Trust Agreement, the GUC Recovery Trustee is authorized to review, object to, settle and resolve all general unsecured claims filed against the Debtors' estates. Trust Agreement, § 6.1.

9. The GUC Recovery Trustee is also authorized to represent the Debtors' estate before any court of competent jurisdiction on matters concerning the GUC Recovery Trust, *id.* at § 2.2(m), to enter into any agreement that is consistent with the Plan, the Confirmation Order, and the GUC Recovery Trust, *id.* at § 2.2(u), and to take any action that is reasonably necessary to administer the GUC Recovery Trust and the Plan. *Id.* at § 2.2(aa).

10. The Confirmation Order provides that "all assets of the Debtors shall be applied to the payment of claims and expenses only in the manner and in the order set forth in the Plan, and creditors shall be enjoined from interfering with the distributions and payments contemplated by the Plan." Confirmation Order at 3 (I.1.(c)).

B. Proof of Claim No. 2047

11. On July 9, 2020, Hernando Sandoval filed Proof of Claim No. 2047 (the "**Claim**"), asserting that he was owed "[e]xcess of \$250,000.00." A copy of the Claim is attached as **Exhibit B**. The Claim relates to a December 11, 2014 Florida state court personal injury action commenced by Mr. Sandoval against the Herald and Ryder Truck Rental, Inc., which remains pending. In the state court action, Mr. Sandoval alleges that he was injured when a pile of newspapers "fell [on him] from above" in a warehouse maintained by the Herald. Ex. B at 6.

12. The GUC Recovery Trustee understands that Travelers Insurance Companies, Inc. has been providing the Herald with a defense of the Florida state court action, and that if Mr. Sandoval obtains a judgment in that case, such judgment will be satisfied by the proceeds of one or more insurance policies maintained by the Herald prior to the Petition Date. The GUC Recovery Trustee also understands that Mr. Sandoval's counsel has a copy of an applicable insurance policy or a policy that relates to Mr. Sandoval's personal injury claims. A copy of a state court filing showing receipt of an insurance policy is attached as **Exhibit C**.

RELIEF REQUESTED

13. Pursuant to Bankruptcy Code section 502 and Bankruptcy Rule 3001, the GUC Recovery Trustee seeks allowance of the Claim solely to the extent recovery is available under any applicable insurance policy maintained by the Herald prior to the Petition Date. For the avoidance of doubt, with this motion, the GUC Recovery Trustee seeks an order: (i) allowing the Claim solely to the extent of available insurance coverage; (ii) precluding Mr. Sandoval from seeking or obtaining any distribution from the GUC Recovery Trust; and (iii) authorizing the GUC Recovery Trustee to make distributions, if any, to the beneficiaries of the GUC Recovery Trust without making any distribution on account of, or reserving for, the Claim.

BASIS FOR RELIEF

14. Section 101 of the Bankruptcy Code defines a claim to include an "unliquidated" claim. 11 U.S.C. § 101(5). Section 502 governs the allowance of claims and provides that a filed claim is deemed allowed unless objected to. *See* 11 U.S.C. § 502(a). Bankruptcy Rule 3001(c)(1) tracks section 502 and provides that a filed proof of claim based on a writing must include supporting documentation. Bankruptcy Rule 3001(f) provides that a properly executed proof of claim constitutes "prima facie evidence of the validity and amount of the claim." Fed. R. Bankr.

P. 3001(f). Thus, “a claim that alleges facts sufficient to support a legal liability to the claimant satisfies the claimant’s initial obligation to go forward.” *In re Brown*, 615 B.R. 725, 738 (Bankr. S.D.N.Y. 2020) (quoting *In re Allegheny Int’l, Inc.*, 954 F.2d 167, 173 (3rd Cir. 1992)).

15. Mr. Sandoval has met his burden that the Claim is *prima facie* evidence of the validity and amount asserted. In particular, Mr. Sandoval asserts that he is owed in “[e]xcess of \$250,000.00” based on allegations in his state court complaint that he was injured when a pile of newspapers fell on him in a warehouse maintained by the Herald. *See* Ex. B at 6. A copy of the state court complaint is attached to the Claim. The personal injury action is pending, Travelers is defending the action on behalf of the Herald, and trial is scheduled to begin in early 2024.

16. The GUC Recovery Trustee seeks allowance of the Claim solely to the extent recovery is available to Mr. Sandoval (if successful) under any insurance policy maintained by the Herald before the Petition Date. The relief requested is permitted because section 9.9(b) of the Plan provides that “[n]o distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors’ insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. . . .” Travelers is defending the Florida state court action and thus recovery might be available under a Travelers policy. Thus, Mr. Sandoval will not receive a distribution from assets of the GUC Recovery Trust, and his sole recovery on the Claim would be from available insurance proceeds.

17. Finally, allowance of the Claim will benefit all parties and creditors, as it will not require the GUC Recovery Trustee to expend estate resources to resolve the Claim, allows Mr. Sandoval to recover from any applicable insurance policy maintained by the Herald rather than through a distribution from assets of the GUC Recovery Trust from which creditors are expected to recover approximately a 4-5% distribution, dispenses with the need to create a reserve for the

Claim, and allows the GUC Recovery Trustee to resolve the Claim without dilution of recoveries, or potentially delaying distributions, to creditors.

18. For these reasons, the GUC Recovery Trustee respectfully requests that the Claim be allowed as set forth in the Proposed Order.

NOTICE

19. Notice of the Motion has been given to parties on the master service list who have agreed to accept service by email and by regular mail to Sandoval, counsel for Sandoval, and counsel for Travelers in the Florida state court action. The GUC Recovery Trustee submits that such notice is sufficient and no other notice need be provided.

CONCLUSION

WHEREFORE, the GUC Recovery Trustee respectfully requests that the Court enter the Proposed Order attached as **Exhibit A**: (a) allowing Proof of Claim No. 2047 solely to the extent recovery on the Claim is available under any insurance policy maintained by the Herald prior to the Petition Date; (b) precluding Mr. Sandoval from seeking or obtaining any distribution from the GUC Recovery Trust; (c) authorizing the GUC Recovery Trustee to make distributions, if any, to beneficiaries of the GUC Recovery Trust without making any distribution on account of, or reserving for, the Claim, and (d) granting such other relief as the Court deems just and proper.

Dated: July 25, 2022
New York, New York

/s/ Leo T. Crowley
PILLSBURY WINTHROP SHAW PITTMAN LLP
Leo T. Crowley
Patrick E. Fitzmaurice
Kwame O. Akuffo
31 West 52nd Street
New York, New York 10019
Telephone: (212) 858-1000
Facsimile: (212) 858-1500

leo.crowley@pillsburylaw.com
patrick.fitzmaurice@pillsburylaw.com
kwame.akuffo@pillsburylaw.com

Counsel for GUC Recovery Trustee

Objection Deadline: August 10, 2022 at 4:00 p.m. (Prevailing Eastern Time)
Hearing Date and Time: August 17, 2022 at 11:00 a.m. (Prevailing Eastern Time)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

.....	X	
In re:	:	Chapter 11
	:	
JCK LEGACY COMPANY, <i>et al.</i> ,	:	Case No. 20-10418 (MEW)
	:	
Debtors. ¹	:	(Jointly Administered)
	:	
.....	X	

NOTICE OF MOTION

PLEASE TAKE NOTICE that William A. Brandt, Jr., in his capacity as trustee of the JCK Legacy GUC Recovery Trust, filed the *GUC Recovery Trustee’s Motion to Allow Proof of Claim No. 2047 filed by Hernando Sandoval, Solely for Recovery under Applicable Insurance* (the “**Motion**”) with the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”).

PLEASE TAKE FURTHER NOTICE that any objection to the Motion must be filed no later than **August 10, 2022 at 4:00 p.m. (ET)** (the “**Objection Deadline**”) with the Bankruptcy Court. At the same time, you must serve a copy of any objection by the Objection Deadline upon the undersigned counsel to the movant and to:

- (a) The Debtors, JCK Legacy Company, c/o FTI Consulting, Inc.,
1201W. Peachtree Street, NW, Suite 500, Atlanta, Georgia
30309, Attn.:Sean M. Harding (sean.harding@fticonsulting.com);
- (b) Counsel for the Plan Administration Trustee, Skadden, Arps,
Slate, Meagher & Flom LLP, One Manhattan West, New York,
New York 10001, Attn.: Shana A. Elberg
(shana.elberg@skadden.com) and Bram A. Strohlic

¹ The Debtors in these chapter 11 cases and the last four characters of each Debtor’s tax identification number are: JCK Legacy Company (0478) and Herald Custom Publishing of Mexico, S. de R.L. de C.V. (SUZ1). The location of the GUC Recovery Trustee’s service address for purposes of these chapter 11 cases is: 110 East 42 Street, Suite 1818 New York, NY 10017.

(bram.strochlic@skadden.com), 300 South Grand Avenue, Suite 3400, Los Angeles, California 90071, Attn.: Van C. Durrer, II (van.durrer@skadden.com), and Destiny N. Almogue (destiny.almogue@skadden.com) and 525 University Avenue, Palo Alto, California 94301 Attn.: Jennifer Madden (jennifer.madden@skadden.com);

- (c) Co-counsel for the Plan Administration Trustee, Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, New York 10119, Attn.: Albert Togut (altogut@teamtogut.com) and Kyle J. Ortiz (kortiz@teamtogut.com);
- (d) The GUC Recovery Trust, c/o DSI Consulting, Inc., 110 East 42nd Street, Suite 1818, New York, New York 10017 Attn.: William A. Brandt., Jr. (bbrandt@DSIconulting.com);
- (e) The Office of the United States Trustee, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, New York 10014, Attn.: Benjamin J. Higgins and Brian S. Masumoto; and
- (f) Any party that has requested notice pursuant to Bankruptcy Rule 2002.

Only those objections made in writing and timely filed in accordance with the above procedures will be considered by the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE THAT, if an objection is filed and unless the telephonic hearing procedures set forth in General Order M-543 (Morris, C.J.) are amended, a hearing to consider the Motion shall be held **telephonically via Court Solutions LLC on August 17, 2022 at 11:00 a.m. (ET)** before the Honorable Michael E. Wiles in the Bankruptcy Court, Courtroom 617, One Bowling Green, New York, New York 10004. Instructions to register for Court Solutions LLC are attached to Gen. Ord. M-543.

PLEASE TAKE FURTHER NOTICE THAT if you fail to object in accordance with this Notice and by the Objection Deadline, the Bankruptcy Court may grant the relief requested in the Motion without further notice or a hearing.

Dated: July 25, 2022
New York, New York

/s/ Leo T. Crowley
PILLSBURY WINTHROP SHAW PITTMAN LLP
Leo T. Crowley
Patrick E. Fitzmaurice
Kwame O. Akuffo
31 West 52nd Street
New York, New York 10019
Telephone: (212) 858-1000
Facsimile: (212) 858-1500
leo.crowley@pillsburylaw.com
patrick.fitzmaurice@pillsburylaw.com
kwame.akuffo@pillsburylaw.com

Counsel for GUC Recovery Trustee

Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X		
In re:	:	Chapter 11
	:	
JCK LEGACY COMPANY, <i>et al.</i> ,	:	Case No. 20-10418 (MEW)
	:	
Debtors. ¹	:	(Jointly Administered)
	:	
-----X		

**ORDER GRANTING GUC RECOVERY TRUSTEE’S MOTION TO ALLOW
PROOF OF CLAIM NO. 2047 FILED BY HERNANDO SANDOVAL,
SOLELY FOR RECOVERY UNDER APPLICABLE INSURANCE**

Upon consideration of the Motion² to allow Proof of Claim No. 2047 solely for recovery under any applicable insurance; and the Court having jurisdiction under 28 U.S.C. §§ 157 and 1334 to consider the Motion and relief requested; and the Motion and relief requested being a core proceeding under 28 U.S.C. § 157(b)(2); and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and it appearing that no other notice is needed; and such relief being in the best interest of the Debtors’ estates and their creditors, and the GUC Recovery Trust; and the Court having considered all papers submitted; and for good cause shown:

It is hereby **ORDERED** that:

1. The Motion is **GRANTED** to the extent set forth herein.
2. Proof of Claim No. 2047 is allowed solely to the extent of recovery under any applicable insurance policy maintained by the Herald prior to the Petition Date.

¹ The Debtors in these chapter 11 cases and the last four characters of each Debtor’s tax identification number are: JCK Legacy Company (0478) and Herald Custom Publishing of Mexico, S. de R.L. de C.V. (5UZ1). The location of the GUC Recovery Trustee’s service address for purposes of these chapter 11 cases is: 110 East 42 Street, Suite 1818 New York, NY 10017.

² Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the Motion.

3. Mr. Sandoval shall not receive a distribution from assets of the GUC Recovery Trust, and the GUC Recovery Trustee is authorized to make distributions, if any, to beneficiaries of the GUC Recovery Trust without need to account for, or create a reserve for, the Claim.

4. This Order shall not prejudice Mr. Sandoval rights to pursue only the claims asserted in the Florida state court action against the Herald.

5. The GUC Recovery Trustee or the claims agent is authorized and directed to modify the claims register in accordance with the terms of this Order.

6. The Court shall retain jurisdiction over any matter arising from or related to the implementation of this Order.

Dated: August ____, 2022
New York, NY

Michael E. Wiles
United States Bankruptcy Judge

Exhibit B

Proof of Claim No. 2047

Fill in this information to identify the case:

Debtor Miami Herald Media Company

United States Bankruptcy Court for the: Southern District of New York
 (State)

Case number 20-10450

**Official Form 410
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. **Who is the current creditor?** Hernando Sandoval
 Name of the current creditor (the person or entity to be paid for this claim)
 Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?** No
 Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
Hernando Sandoval Attn Bram Gechtman Law Offices of Bram Gechtman, PA 175 Southwest 7th Street, #1804 Miami, FL 33130 Contact phone <u>3052227836</u> Contact email <u>bjg@gcflalaw.com</u>	 Contact phone _____ Contact email _____

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)
 Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?** No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?** No
 Yes. Who made the earlier filing? _____



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. How much is the claim? \$ Excess of 250,000.00. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
 Limit disclosing information that is entitled to privacy, such as health care information.

Personal Injury

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature or property:
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____

Basis for perfection: _____
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$ _____

Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 07/09/2020
MM / DD / YYYY

/s/Bram J. Gechtman
Signature

Print the name of the person who is completing and signing this claim:

Name Bram J. Gechtman
First name Middle name Last name

Title Attorney

Company Law Offices of Bram J. Gechtman
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____ Email _____



For phone assistance: Domestic (866) 810-6898 | International (424) 236-7215

Debtor: 20-10450 - Miami Herald Media Company District: Southern District of New York, New York Division		
Creditor: Hernando Sandoval Attn Bram Gechtman Law Offices of Bram Gechtman, PA 175 Southwest 7th Street, #1804 Miami, FL, 33130 Phone: 3052227836 Phone 2: 7862458495 Fax: 7862458495 Email: bjg@gcflalaw.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Authorized agent	
Other Names Used with Debtor:	Amends Claim: No Acquired Claim: No	
Basis of Claim: Personal Injury	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: Excess of 250,000.00	Includes Interest or Charges: No	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: No Subject to Right of Setoff: No	Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:	
Submitted By: Bram J. Gechtman on 09-Jul-2020 3:43:34 p.m. Eastern Time Title: Attorney Company: Law Offices of Bram J. Gechtman		

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

HERNANDO SANDOVAL

CASE NUMBER: 14-020039 CA 01

Plaintiff,

vs.

MIAMI HERALD MEDIA COMPANY;
RYDER TRUCK RENTAL, INC.

Defendant.

FIRST AMENDED COMPLAINT
(to add party Defendant Ryder)

Plaintiff, Hernando Sandoval, hereby sues the Defendant Miami Herald Media Company and Ryder Truck Rental, Inc. and as grounds in support thereof would state:

PLAINTIFF SANDOVAL COUNT I- NEGLIGENCE AGAINST MIAMI HERALD

1. This Court has jurisdiction pursuant to F.S. §86.011 to declare the rights, status and legal relations between the parties. The Court likewise has jurisdiction because the amount in controversy exceeds \$15,000.00, exclusive of attorney's fees, costs and interest.
2. At all material times, Plaintiff HERNANDO SANDOVAL (hereafter referred to as "SANDOVAL") was a resident of Miami-Dade, Florida.
3. At all material times, Defendant MIAMI HERALD MEDIA COMPANY (hereafter referred to as "MIAMI HERALD or HERALD") was a Florida Corporation in the media business with a principal address at 3511 NW 91st Avenue, Doral, Florida, 33172. Defendant sells newspapers, posts internet news and operates warehouses, including those located and doing business in Miami-Dade County, Florida, for the purposes of creating

and/or storing and/or manufacturing newspapers for delivery to private retailers and the public at large, with one such warehouse location at

4. On or about August 18, 2013, in Miami-Dade County Florida, while SANDOVAL was an invitee on Defendant's, MIAMI HERALD, premises, a stack of newspapers piled high upon one another fell from above, striking Plaintiff.
5. As a result of Defendant's, MIAMI HERALD, unsafe and/or hazardous condition on Defendant's premises, Plaintiff sustained injury to his body.
6. Defendant, MIAMI HERALD, failed to maintain the premises in a safe and/or non-hazardous condition.
7. Plaintiff sustained injuries as a result of Defendant's, MIAMI HERALD, negligence, and as further described herein.
8. Defendant, MIAMI HERALD, owed a duty to Plaintiff to maintain its' premises in a reasonably safe condition.
9. Defendant, MIAMI HERALD, breached its duty of care to Plaintiff SANDOVAL by failing to maintain its' premises in a reasonably safe condition, as Defendant negligently created the hazard causing Plaintiff's injuries.
10. That as a direct and proximate cause of Defendant's, MIAMI HERALD, breach of its duty of care to Plaintiff SANDOVAL suffered damages.
11. As a result of Defendant's, MIAMI HERALD, negligence, on or about August 18, 2013, SANDOVAL sustained severe injury, including but not limited to: great emotional distress and anguish; medical expenses, loss of valuable benefits; loss of income; mental distress, pain, and suffering, physical injuries to include deformity, aggravation of pre-existing condition(s), surgical intervention for injuries sustained, as well as permanent physical

disability, loss of consortium.

12. Plaintiff demands jury trial on all claims so triable.

WHEREFORE, plaintiff demands judgment against defendant for compensatory damages plus costs of this action and whatever other relief this Court deems reasonable and just.

PLAINTIFF SANDOVAL COUNT II – ESTOPPEL AGAINST MIAMI HERALD

13. Plaintiff re-alleges and reaffirms Paragraphs 1-12 of this complaint as if fully set out herein.
14. That MIAMI HERALD, nor its insurer, Charter Oak Fire Insurance Company paid or provided any benefits, payments or reimbursements to SANDOVAL, although requested to do so by the filing of a Petition for Benefits before the Judges of Compensation Claims.
15. That MIAMI HERALD, nor its insurer, Charter Oak Fire Insurance Company paid or provided any medical benefits or lost wages to SANDOVAL.
16. That on or about October 24, 2013 SANDOVAL filed a Petition for Benefits (claim) for workers' compensation benefits and a claim for medical care with the State of Florida, Offices of Judges of Compensation Claims at its offices in Tallahassee, Florida with copies served on Defendant and its' insurer.
17. That the Petition for benefits filed on October 24, 2013 met all the requirements of a valid and specific claim as required by chapter 440, Florida Statutes, known as the Workers' Compensation Act.
18. The Petition for Benefits filed on October 24, 2013 with the Offices of the Judges of Compensation requested coverage (compensability) for the injuries sustained on or about August 18, 2013.
19. That MIAMI HERALD'S workers' compensation counsel served correspondence on

December 5, 2013 stating that Plaintiff was not an employee of the Miami Herald.

20. That MIAMI HERALD'S workers' compensation counsel served correspondence on December 10, 2013 stating again that Plaintiff was not an employee of the Miami Herald and that Defendant would seek to tax costs against Plaintiff in the event Plaintiff failed to dismiss his Petition for Benefits for workers' compensation insurance benefits.
21. That on or about January 14, 2014 SANDOVAL voluntarily dismissed his Petition for Benefits with the Offices of the Judges of Compensation Claims based on Defendant's position that Plaintiff was not an employee; and/or that Plaintiff was not a beneficiary to the Defendant's workers' compensation insurance policy; and/or that the injuries did not arise out of the course and scope of Plaintiff's employment with Defendant.
22. That Plaintiff SANDOVAL has paid for and/or become liable for medical services.
23. That Plaintiff changed his position based on the position of Defendant, i.e. that Plaintiff was not an employee and/or covered individual under Defendant's workers' compensation insurance policy.
24. That Plaintiff's change in position in reliance on Defendant's representation(s) and/or position: the denial of workers' compensation coverage (that Plaintiff is not covered and/or an employee of Defendant) has been to his detriment.
25. As a result of Plaintiff's reliance on Defendant's position taken before the Offices of the Judges of Compensation Claims, Plaintiff has suffered damages, including but not limited to: medical expenses, loss of valuable benefits; loss of income / indemnity benefits otherwise payable by workers' compensation insurance, to include any and all conditions stated hereinabove including aggravations to any such condition that may have been pre-existing in nature at the time of the injuries.

WHEREFORE, plaintiff demands judgment against defendant for compensatory damages, estoppel to assert workers' compensation immunity, the costs of this action and whatever other relief this Court deems reasonable and just.

COUNT III – NEGLIGENCE AGAINST RYDER

26. Plaintiff re-alleges paragraphs 1-25 as if fully re-stated herein.
27. Defendant RYDER TRUCK RENTAL, INC. (hereafter referred to as "RYDER") is a Florida Corporation based out of Miami-Dade County, Florida and is otherwise sui juris.
28. On or about August 18, 2013, in Miami-Dade County Florida, while SANDOVAL was an invitee on Defendant's HERALD premises, a stack of newspapers piled high upon one another fell from above, striking Plaintiff.
29. Defendant RYDER stacked the newspapers and created the unsafe and/or hazardous condition on Defendant's HERALD premises, whereby Plaintiff sustained injury to his body.
30. Defendant RYDER failed to use ordinary care and created a unsafe and/or hazardous condition.
31. Plaintiff sustained injuries as a result of Defendant's, RYDER, negligence, as further described herein.
32. Defendant, RYDER, owed a duty to invitees on Defendant's, MIAMI HERALD, premises, including Plaintiff, and had a duty to prevent the newspapers from falling and creating a hazardous condition.
33. Defendant, RYDER, breached its duty of care to Plaintiff, SANDOVAL, by failing to use due care and stacking the newspapers in a reasonably safe condition, as Defendant RYDER negligently created the hazard causing Plaintiff's injuries.

34. That as a direct and proximate cause of Defendant's, RYDER, breach of its duty of care to Plaintiff, SANDOVAL, suffered damages.
35. As a result of Defendant's, RYDER, negligence, on or about August 18, 2013, SANDOVAL sustained severe injury, including but not limited to: great emotional distress and anguish; medical expenses, loss of valuable benefits; loss of income; mental distress, pain, and suffering, physical injuries to include deformity, aggravation of pre-existing condition(s), surgical intervention for injuries sustained, as well as permanent physical disability, loss of consortium.
35. Plaintiff demands jury trial on all claims so triable.

WHEREFORE, plaintiff demands judgment against defendant for compensatory damages plus costs of this action and whatever other relief this Court deems reasonable and just.

COUNT IV – AGAINST RYDER FOR VICARIOUS LIABILITY

36. Plaintiff re-alleges paragraphs 1-35 as if fully re-stated herein.
37. Defendant's RYDER employees and/or agents, while in the course and scope of their employment in furtherance of the benefit of the principal (employer / contractor RYDER) are liable of the acts and/or omissions creating the hazardous condition resulting in injury to Plaintiff.
38. As a direct and proximate cause of the negligent acts committed by Defendant's RYDER employees / agents / contractors, Plaintiff sustained injuries to include: great emotional distress and anguish; medical expenses, loss of valuable benefits; loss of income; mental distress, pain, and suffering, physical injuries to include deformity, aggravation of pre-existing condition(s), surgical intervention for injuries sustained, as well as permanent physical disability, loss of consortium.

WHEREFORE, Plaintiff demands Judgment against Defendant for compensatory damages, costs of this action and all other relief this Court deems reasonable and just.

JURY TRIAL DEMAND

39. Plaintiff demands trial by jury on all claims.

WHEREFORE, Plaintiff demands Judgment against Defendants for compensatory damages, costs of this action and all other relief this Court deems reasonable and just.

Respectfully submitted,
Attorney for Plaintiff
Bram J. Gechtman, Esq.
Law Offices of Bram J. Gechtman, PA
175 Southwest 7th Street, #1804
Miami, FL 33130
(305) 222-7836 Telephone
(786) 245-8495 Facsimile
bjg@gcflalaw.com

Bram J. Gechtman, Esq.
Florida Bar No. 538701

Exhibit C

Production of Insurance Policy

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR MIAMI-
DADE, FLORIDA

Case No. 14-020039CA01

HERNANDO SANDOVAL,

Plaintiff,

vs.

MIAMI HERALD MEDIA COMPANY,

Defendants.

**DEFENDANT'S RESPONSE TO PLAINTIFF'S SUPPLEMENTAL
REQUEST TO PRODUCE**

COMES NOW the Defendant, MIAMI HERALD MEDIA COMPANY, by and through undersigned attorney, and files this response to the Plaintiff's Supplemental Request to Produce as follows:

1. The requested Insurance Policy is attached hereto.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by e-mail to **Bram J. Gechtman, Esq.**, (bjg@gcflalaw.com); (rosa@gcflalaw.com); (ana@gcflalaw.com); *Attorney for Plaintiff*, 175 S.W. 7 Street, Suite 1804, Miami, FL 33130, on this 19th day of May, 2021.

By /s/ Robert F. Tacher
ROBERT F. TACHER, ESQ.
Florida Bar # 231592
PETERSON BERNARD
Attorneys for Defendant
707 S.E. 3rd Avenue, Suite 500
Fort Lauderdale, Florida 33316
954-763-3200
954-728-9019 (facsimile)
Robert.Tacher@petersonbernard.com
Nelly.Tacher@petersonbernard.com
Nicole.Raffa@petersonbernard.com

RFT/nmr
7102.87090