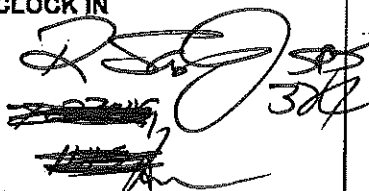

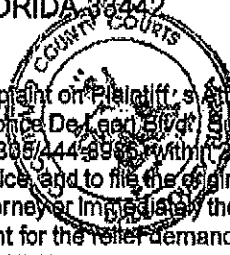


X IN THE CIRCUIT COURT OF THE 11 <sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA. Q		
DIVISION X CIVIL Q OTHER	SUMMONS	CASE NUMBER 09-53442CA091
PLAINTIFF(S)  JOSEPH ONGISTCO,	DEFENDANT (S)  CITIZENS PROPERTY INSURANCE CORPORATION, and ART NEWMAN	CLOCK IN 
<p>THE STATE OF FLORIDA: To Each Sheriff of the State: <i>Served - 8.13.09 11:25 AM</i></p> <p>You ARE COMMANDED to serve this summons and a copy of the <b>Complaint</b> in this action on defendant:</p> <p style="text-align: center;"><b>ART NEWMAN</b> 1520 S. POWERLINE ROAD SUITE A DEERFIELD BEACH, FLORIDA 33442</p> <p>Defendant is required to serve written defenses to the Complaint on Plaintiff's Attorney: Alvarez Carbonell &amp; Gomez, P.L. whose address is 2330 Ponce De Leon Blvd, Suite 201, Coral Gables, Florida 33134, Telephone No.: 305/444-5886, Telefax No.: 305/444-8999, within 30 days after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the Complaint.</p>		
CLERK OF COURTS	BY  DEPUTY CLERK	DATE AUG 16 2009
<p style="text-align: center;">AMERICANS WITH DISABILITIES ACT OF 1990 IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, PERSONS NEEDING A SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE ASA COORDINATOR, NO LATER THAN 7 DAYS PRIOR TO THE PROCEEDINGS AT 305/375-2008 (VOICE) OF 305/376-2007 (TDD)</p>		

All-States Process Services, Inc.,  
13015 S.W. 89 Place, Suite 221  
Miami, Florida 33176  
(305) 971-9636 Fax (305) 255-7072  
www.all-states-process-service.net



COURT SEAL

JOSEPH ONGISTCO,

Plaintiff,

v.

CITIZENS PROPERTY INSURANCE CORPORATION, a Florida Corporation, and ART NEWMAN, an individual Defendant.

IN THE CIRCUIT COURT OF THE 11<sup>th</sup> JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 09-53442CA09

**CIVIL COVER SHEET**

I. TYPE OF CASE. (Place in one box only if the case fits more than one type of case, select the most definitive.)

DOMESTIC RELATION

TORTS

OTHER CIVIL

Simplified dissolution

Professional Malpractice

Contracts

Dissolution

Products Liability

Condominium

Support-IV-D

Auto Negligence

Real Property Mortgage Foreclosure

Support Non-IV-D

Other Negligence

Other

Domestic Violence

Other Domestic Relations

II. Is Jury Demanded on Complaint?

DATE: 7/15/09  YES

NO

By: 

Benjamin R. Alvarez, Esq.  
Florida Bar No. 175633  
Jorge L. Carbonell Jr, Esq.  
Florida Bar No. 0011783

IN THE CIRCUIT COURT OF THE 11<sup>th</sup>  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

JOSEPH ONGISTCO,

GENERAL JURISDICTION DIVISION

Petitioner,

CASE NO.: 09-53442CA09

v.

CITIZENS PROPERTY INSURANCE  
CORPORATION,  
a Florida Corporation, and ART  
NEWMAN, an individual

Respondents.

**PETITION TO VACATE UMPIRE APPRAISAL AWARD OR IN THE ALTERNATIVE TO  
MODIFY OR CORRECT AWARD**

Petitioner, JOSEPH ONGISTCO (the "Insured"), hereby files this Petition against Respondents, CITIZENS PROPERTY INSURANCE CORPORATION (the "Insurance Company") and ART NEWMAN (the "Umpire"), to vacate the Appraisal Award dated July 30, 2008 or in the alternative to Modify or Correct the Award in the Insured's claim for damages against the Insurance Company and alleges as follows:

1. This is a petition to vacate an appraisal award executed by a mutually selected umpire.
2. The Umpire is a licensed umpire, who at all times material hereto has been practicing throughout the State of Florida, including Miami-Dade County, Florida.
3. The Insurance Company is a Florida corporation, organized and existing under the laws of Florida, qualified to do business in Florida, and has at all times material hereto been conducting business in Miami-Dade County, Florida.

4. Venue is proper in Miami-Dade County, Florida because the contract, which forms the subject matter of this lawsuit, was executed in Miami-Dade County, Florida.

5. All conditions precedent to the filing of this petition have occurred, have been waived or have been performed.

#### GENERAL ALLEGATIONS

6. At all times material hereto, in consideration of a premium paid by the Insured, there was in full force and effect a certain homeowners insurance policy issued by the Insurance Company with a policy number of 1310128 (the "Policy").

7. Accordingly, under the terms of the Policy, the Insurance Company agreed to provide insurance coverage to the Insured's property (the "Home") against certain losses.

8. On or about October 24, 2005, while the Policy was in full force and effect the Property sustained a covered loss as a result of hurricane damage (the "Loss").

9. The Insurance Company acknowledged the Loss as claim number 277327 and assigned an insurance adjuster to adjust the Loss.

10. Accordingly, the Insurance Company inspected the Property and tendered a payment of insurance proceeds to the Insured. However, after diligent inspection of the Loss, it was obvious that the Property sustained damage greater than the damages acknowledged by the Insurance Company.

11. Pursuant to the terms of the Policy, the Insured invoked the appraisal process and demanded the Insurance Company to comply with the Policy's appraisal clause via US Mail and facsimile.

12. The Insurance Company complied with the Insured's appraisal demand and selected Shawn Hall of Burton Claims Service, Inc. as their appraiser. Shortly thereafter, the Insured selected Tony Quintana of Claimserv Co. as his appraiser.

13. On or about March 24, 2008, the appraisers, in order to provide an accurate appraisal estimate, conducted an inspection of the insured's property which is the subject of this action.

14. Each appraiser separately detailed the actual cash value, the replacement cost, and the amount of loss of each item. Unfortunately, they failed to come to an agreement.

15. As afforded in the Policy, in the event that the competent and impartial appraisers are unable to reach an agreement, the decision to set the amount of loss must be assigned to a neutral umpire, selected by both the Insured and the Insurance Company.

16. Mr. Art Newman (the "Umpire"), was mutually selected by Mr. Quintana and Mr. Hall, before the start of the appraisal process.

17. On or about June 13, 2008, both appraisers provided the Umpire copies of their loss estimates. In order to provide a competent and accurate estimate of the loss, The Umpire scheduled an inspection of the property. This property inspection was to be attended by himself, Mr. Quintana and Mr. Hall and was scheduled to take place on July 23, 2008.

18. On July 23, 2008, the date mutually agreed to by all parties, the Umpire failed to appear at the inspection and did not notify any party of same.

19. Notwithstanding, his failure to appear at the inspection and failure to examine the physical damages that were the subject of disagreement between the appraisers, on July 30, 2008, the Umpire submitted an executed Appraisal Award in the amount of \$17,613.61.

20. The Umpire never visited nor inspected the property, never attempted to reschedule said inspection, never examined the physical damages that were the subject of disagreement between the appraisers and never properly appraised the amount of the losses.

21. The Umpire did not have prior knowledge of the claim, and therefore was unqualified to make an assessment of the damages without personally inspecting the property first.

22. The Insured has suffered and continues to suffer damages resulting from the Umpire's egregious behavior in issuing an Appraisal Award after failing to inspect the property.

23. Pursuant to Florida Statute Section 682.13(b), the court shall vacate an award when: "*... there is evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or umpire or misconduct prejudicing the rights of any party.*"

24. Clearly, the issuance of an Appraisal Award by the Umpire, without the inspection of the property, evidences partiality on his part and clearly constitutes

misconduct prejudicing the rights of the Insured. These egregious acts of misconduct have undoubtedly damaged the Insured.

25. The Insured has been obligated to retain the undersigned attorneys for the prosecution of this action and is entitled to a reasonable attorneys' fee pursuant to Florida Statute Section 627.428.

26. This Court should vacate the Appraisal Award executed by the Umpire who has engaged in blatant misconduct as a result of his actions, prejudiced the rights of the Insured and has otherwise greatly damage the Insured.

WHEREFORE, the Insured respectfully requests that this Court enter judgment against the Insurance Company and Art Newman, vacate the Umpire's Appraisal Award or in the alternative modify or correct the award and entitle the undersigned to court costs and reasonable attorneys' fees pursuant to Sections 627.428, Florida Statutes.

Dated in Miami this 15<sup>th</sup> day of July, 2009.

**Alvarez, Carbonell & Gomez, P.L.**  
Counsel for the Insured  
2330 Ponce de Leon Blvd., Suite 201  
Coral Gables, Florida 33134  
Telephone No. (305) 444-5885  
Facsimile No. (305) 444-8986

By: 

Benjamin R. Alvarez, Esq.  
Florida Bar No. 175633  
Jorge L. Carbonell Jr, Esq.  
Florida Bar No. 0011783