

**IN THE CIRCUIT COURT FOR THE  
SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY,  
FLORIDA**

Case No. 12-034123 (07)

COMPLEX LITIGATION UNIT

PHILIP J. VON KAHLE, as Conservator of  
P&S Associates, General Partnership and  
S&P Associates, General Partnership, et al.,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

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**PLAINTIFFS' MOTION TO STRIKE DEFENDANTS FRANK AVELLINO'S AND  
MICHAEL BIENES' SIXTH AFFIRMATIVE DEFENSES**

Plaintiffs, by and through the undersigned counsel hereby file this Motion to Strike Defendants Frank Avellino's and Michael Bienes' (collectively, "Defendants") Sixth Amended Affirmative Defenses and in support thereof state: <sup>1</sup>

1. On August 27, 2015, the Court entered an Order Striking Defendants' Seventh Affirmative Defenses (which are now the Sixth Affirmative Defenses).

2. On September 8, 2015, Defendants filed Amended Affirmative Defenses. Defendants' Sixth Affirmative Defenses provide in relevant part that:

As and for [their] sixth affirmative defense[s], [Defendants] assert[] that to the extent Plaintiffs sustained any damages, other parties to this lawsuit may have caused or contributed to such damages . . . [Defendants are] entitled to a reduction of any amount of damages assessed, either in whole or in part, based upon the provisions of Florida's Tort Reform Act, Chapter 768, Florida Statutes.

3. Plaintiffs cannot respond to Defendants' Sixth Affirmative Defenses because

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<sup>1</sup> Because Defendants' Amended Affirmative Defenses are materially identical, Plaintiffs are seeking to strike them in a single Motion.

Defendants failed to plead what specific statute (or what section of that statute) applies, how that statute applies, or what facts support those affirmative defenses. Although Defendants listed in the Sixth Affirmative Defenses the names of people and entities they conclusorily allege “caused or contributed” to damages, Defendants failed to mention what conduct they were allegedly engaged in or how that conduct results in a reduction of damages.

4. Accordingly, Defendants’ Sixth Affirmative Defenses must be stricken.

WHEREFORE Plaintiffs respectfully request the Court enter an Order Striking Defendants’ Sixth Affirmative Defenses and granting such further relief the Court deems just and proper.

Dated: September 24, 2015

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 24th day of September, 2015, a true and correct copy of the foregoing document was served on the following parties:

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