

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

CASE NUMBER: 17-026997 CA  
SECTION 44 CBL

ADF INTERNATIONAL, INC.,  
a foreign corporation,

Plaintiff,

vs.

SUFFOLK CONSTRUCTION COMPANY,  
INC., a foreign corporation, FEDERAL  
INSURANCE COMPANY, a foreign  
corporation, FIDELITY AND DEPOSIT  
COMPANY OF MARYLAND, a foreign  
corporation, LIBERTY MUTUAL  
INSURANCE COMPANY, a foreign  
corporation, ZURICH AMERICAN  
INSURANCE COMPANY, a foreign  
corporation, SKIDMORE, OWINGS,  
MERRILL FLORIDA LLC, a foreign limited  
liability company, ALL ABOARD FLORIDA  
– OPERATIONS, LLC, a foreign limited  
liability company and DTS 2MC OFFICE,  
LLC, a foreign limited liability company,

Defendants.

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**DEFENDANTS SUFFOLK CONSTRUCTION COMPANY INC., FEDERAL  
INSURANCE COMPANY, FIDELITY AND DEPOSIT COMPANY OF MARYLAND,  
LIBERTY MUTUAL INSURANCE COMPANY AND ZURICH AMERICAN INSURANCE  
COMPANY'S MOTION TO DISMISS COUNTS I, II, VI AND VII OF PLAINTIFF'S  
COMPLAINT**

Defendants, SUFFOLK CONSTRUCTION COMPANY, INC. ("Suffolk"), FEDERAL  
INSURANCE COMPANY, FIDELITY AND DEPOSIT COMPANY OF MARYLAND,  
LIBERTY MUTUAL INSURANCE COMPANY, and ZURICH AMERICAN INSURANCE  
COMPANY, (collectively "Sureties"), by and through undersigned counsel and in  
accordance with Florida Rule of Civil Procedure 1.140, hereby file this Motion to Dismiss

Counts I, II, VI and VII of Plaintiff ADF INTERNATIONAL, INC.'s ("ADF") Complaint dated November 21, 2017 and in support thereof state as follows:

**I. PRELIMINARY STATEMENT**

Counts I (breach of the terminal subcontract as to Suffolk), II (action against the terminal payment bond as to the Sureties), VI (breach of the OB1 subcontract as to Suffolk), and VII (action against the OB1 payment bond as to the Sureties) of ADF's Complaint should be dismissed with prejudice because: (i) the damages for which ADF seek against Suffolk and the Sureties are barred by the no damage for delay provisions of the subcontracts by and between Suffolk and ADF; and (ii) ADF's purported delay damages are not recoverable under the payment bonds issued by the Sureties.

**II. FACTUAL AND PROCEDURAL BACKGROUND**

1. This action arises out of the construction of the Brightline express train service which will connect Miami, Fort Lauderdale and West Palm Beach, with a Phase Two planned to extend service to Orlando.

2. Pertinent to the instant litigation are two (2) projects being constructed in downtown Miami: (i) the All Aboard Florida – Miami Terminal Project which consists of the main train terminal ("Terminal Project"); and (ii) 2 Miami Central Over Building<sup>1</sup> ("OB1 Project") which consists of a high-rise office building being constructed above the main train terminal. See *e.g.*, ADF's Complaint at ¶¶ 14, 15, 21 and 22.

3. Defendant ALL ABOARD FLORIDA – OPERATIONS, LLC ("AAF") is the owner for the Terminal Project. See ADF's Complaint at ¶ 14.

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<sup>1</sup> In its Complaint, Plaintiff mistakenly referred to the OB1 project as the "2 Miami Central office building," when in fact it is known as "2 Miami Central Over Building."