

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

RAUL FOJAS, Derivatively On Behalf of)
ALLSTATE CORP.,)
Plaintiff,)

vs.)

Civil Action No. 08-cv-00423
Judge William T. Hart

F. DUANE ACKERMAN, JAMES G.)
ANDRESS, ROBERT D. BEYER, W. JAMES)
FARRELL, JACK M. GREENBERG,)
RONALD T. LEMAY, EDWARD M. LIDDY,)
J. CHRISTOPHER REYES, H. JOHN RILEY,)
JR., JOSHUA I. SMITH, JUDITH A.)
SPRIESER, MARY ALICE TAYLOR,)
THOMAS J. WILSON,)

Defendants,)

-and-)

ALLSTATE CORP., a Delaware corporation,)
Nominal Defendant.)

**RESPONSE TO DEFENDANTS' SUBMISSION OF
SUPPLEMENTAL AUTHORITY**

Plaintiff submits this response to Defendants' June 9, 2008 letter submission to this Court enclosing a Memorandum Opinion and Order in *Bronstein v. Austin*, No. 07-cv-3984 (N.D. Ill. May 30, 2008) ("*Bronstein*").

Bronstein provides little support for Defendants' Motion to Dismiss. As noted by Judge Kendall, the *Bronstein* complaint failed to allege facts demonstrating that a majority of the board faced a substantial threat of liability. *Bronstein* at 8. In contrast, Plaintiff's Complaint alleges that under the Allstate Board of Directors' ("Board") active guidance, the Company pursued a bad faith litigation strategy designed to conceal and

perpetuate the arbitrary denial, delay and reduction of payments to injured policy holders. Unlike in *Bronstein* where the bad faith allegations hinged merely on one FDA Warning Letter, the Board here approved or acquiesced to the litigation strategy to conceal certain documents in multiple judicial and regulatory proceedings across the country over a period of years and continuing to this day.

Indeed, the litigation strategy has caused monetary damage to the Company and its shareholders, including the imposition of monetary sanctions in judicial proceedings, the possibility of criminal liability and the suspension (currently abated) from writing policies in the State of Florida. In just one instance, the strategy of noncompliance with subpoenas issued by the Florida Office of Insurance Regulation (“FOIR”) has cost the Company millions of dollars of business in the State of Florida, as well as considerable expenses to defend the Company’s bad faith litigation strategy.

Allstate is also liable for millions of dollars in fines for being held in contempt of court in other judicial proceedings currently being appealed by the Company, not to mention the untold millions of dollars to defend, settle or satisfy judgments in the civil litigation stemming from its failure to produce documents regarding the Company’s claims processing practices. Therefore, in stark contrast to *Bronstein*, where Judge Kendall found that the complaint failed to show that the breaches of fiduciary duties alleged caused injury to Abbott Labs (*Id.* at 10), Plaintiff has alleged facts enumerating systemic injury to the Company.

In short, *Bronstein* does not diminish the support for denying Defendants’ Motion to Dismiss.

Dated: June 13, 2008

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