The Agreement states:

> **IN CONSIDERATION OF** the covenants herein contained **FIRSTLEASE, INC. ("OWNER")** hereby rents to the Corporation, firm or individual executing Page 2 of the reverse side hereof ("**RENTER"),** the motor vehicle described on the reverse side hereof ("Vehicle") of the terms and conditions contain herein (Included on the reverse side hereof) set forth....

The Agreement spells out the respective obligations of the Renter and Owner as to the Vehicle in fourteen separate paragraphs.

Howard Bryant signed the Agreement on four separate lines. On the face of the Agreement, Howard Bryant signed the Agreement twice as the "Renter," once to acknowledge his agreement to provide automobile liability and property damage coverage in the minimum amount of $1,000,000, and once to acknowledge his agreement to provide comprehensive and collision coverage in an amount acceptable to the lessor and subject to a deductible not to exceed $5,000 for which he would be responsible. Howard Bryant's signature appears next to the phrase "Customer Signature" on the first page and on the Commercial Vehicle Damage Description Report. Howard Bryant signed the following acknowledgment:

> CUSTOMER ACKNOWLEGEMENT OF TERMS AND CONDITIONS: I have read the terms and conditions of this agreement and agree to be bound by them and to return the vehicle on or before the return date at the location specified. The renter acknowledges responsibility for the cost of body damage, parking, and photo radar violations.

There is no indication next to the signatures that Howard Bryant signed the Agreement

in a representative capacity.

On the face of the Agreement, the "Customer" is also identified as:

001 10001425 000
SEIDS-Howard Bryant
11540 Hwy 92 East
Seffner, Florida
33584

Paragraph 5 of the Agreement required the Renter to maintain, at the expense of the Renter, an automobile bodily injury and property damage liability policy, and furnish satisfactory evidence to Owner that Owner was on the insurance policy as an "additional insured and Loss Payee." The purpose of the insurance policy was to protect "**OWNER** and **RENTER,** and their respective agents, servants, or employees from any and all liabilities for injuries to the property and the person, including death, of Third Persons, resulting from the ownership, use, operation, or maintenance of the vehicle."

Howard Bryant provided a certificate of liability insurance dated 3/28/2006 to FirstLease (Dkt. 1-2, pp. 10-12) which states that Howard Bryant is an insured under Zurich's automobile liability policy TRK29389003. The certificate states that the Certificate Holder, First Lease, Inc., is an additional insured/Loss Payee to the following vehicle: 2007 International Unit 37702, vin # 1HTMMAAL77H368405. There is an additional certificate of liability insurance dated 3/29/2006 which states "[First] Lease Inc. and their affiliates are included as Additional Insured/Loss Payee. Coverage [intend]ed to include all vehicles leased or rented." (Dkt. 1-2, p. 13). The document's words are cut off and the additional certificate is an incomplete document.

The certificates are evidence that the liability insurance required by the Vehicle

Rental Agreement was obtained by the Renter. The required coverages were limited to bodily injury liability coverage for personal injuries to third parties and damage to the property of third parties resulting from the ownership, use, operation, or maintenance of the vehicle while it was in the custody of the Renter, during the term of the Agreement.

Harco has contended that FirstLease entered into the Vehicle Rental Agreement with SEIDS, and that Howard Bryant signed the Agreement as the agent or apparent agent of SEIDS.

Zurich argues that, in the underlying litigation, FirstLease filed a third party complaint against SEIDS for contractual indemnity under the terms of the Rental Agreement with Howard Bryant. Zurich further argues that, throughout the underlying litigation, SEIDS denied that SEIDS was a party to the Agreement, and that Howard Bryant executed the Agreement as the authorized agent of SEIDS. SEIDS also argued that, even if SEIDS were deemed a party to the Agreement, the indemnity provisions contained in the Agreement were not enforceable since FirstLease sought indemnity for claims arising out of its own negligence. The Hillsborough County Circuit Court granted summary judgment in favor of SEIDS, declaring the indemnity clause in the Agreement to be invalid and unenforceable.

Under Florida law, a writing that the parties intend to be their final embodiment of agreement cannot be modified by evidence that adds to, varies, or contradicts the writing. King v. Bray, 867 So.2d 1224 (Fla. 5th DCA 2004). Harco has argued that FirstLease always understood that the Vehicle Rental Agreement was between FirstLease and SEIDS, with Howard Bryant signing on SEIDS' behalf. The Agreement itself identifies the Renter as the person who signed the Agreement, and there is no indication in the signature that the Agreement was signed in a representative capacity.

The Court finds that there is no ambiguity as to the capacity in which Howard Bryant signed the Agreement. If the Agreement were found to be ambiguous by virtue of the inclusion of "SEIDS" in the Customer address, then considering the undisputed evidence that each individual contractor renting equipment from FirstLease is assigned a unique customer number, which appears on each individual rental agreement and invoice, the evidence confirms that Howard Bryant signed the Agreement in his individual capacity. (Dkt. 21, p. 10).

After considering the Agreement, the Court concludes that FirstLease and Howard Bryant were parties to that Agreement, and SEIDS was not a party.

Florida law permits vehicle leasing companies to shift primary coverage for liability and personal injury protection benefits up to the limits required by Florida's financial responsibility laws.. The Court notes that Ch. 627.7263, Florida Statutes, provides:

> (1) The valid and collectible liability insurance or personal injury protection insurance providing coverage for the lessor of a motor vehicle for rent or lease is primary unless otherwise stated in at least 10-point type on the face of the rental or lease agreement. Such insurance is primary for the limits of liability and personal injury protection coverage as required by ss. 324.021(7) and 627.736.
>
> (2) If the lessee's coverage is to be primary, the rental or lease agreement must contain the following language, in at least 10-point type:
>
> "The valid and collectible liability insurance and personal injury protection insurance of any authorized rental or leasing driver is primary for the limits of liability and personal injury protection coverage required by ss. 324.021(7) and 627.736, Florida Statutes."

Where properly invoked, Ch. 627.7263 provides that the lessee and not the lessor is responsible for providing primary liability insurance on a leased vehicle, and that the lessee's insurer will defend its insured in any suit against the lessee. Allstate Insurance Company v. RJT Enterprises, Inc., 692 So.2d 142 (Fla. 1997). Where a lessor fails to properly invoke the provisions of Ch. 627.7263, the lessor, and its insurer, if any, will remain primarily responsible for damages caused as a result of negligence in the use of the vehicle. Rosati v. Vaillancourt, (Fla. 5th DCA 2003).

The shifting of responsibility for the duty to indemnify to the extent of the financial responsibility requirements of the law does not encompass a duty on the part of the lessee's insurance carrier to defend the lessor. RJT, supra at 145. In the absence of an express statutory or contractual duty to defend, there is no such duty. RJT at 144.

B. Equipment Lease and Independent Truckman's Agreement (Dkt. 21-8)

Howard Bryant entered into the Equipment Lease and Independent Truckman's Agreement ("ITA") with SEIDS on 1/15/2006, in his capacity as a "Contractor." The ITA is an integrated Agreement:

> 27. This agreement contains the entire understanding between the parties and supersedes any prior agreement between the parties concerning the subject matter of this agreement.

The ITA is an equipment lease as to the equipment listed in Exhibit A to the Agreement, pursuant to 49 C.F.R. 376.11(a). SEIDS is a motor carrier for whom Howard Bryant performed delivery services as an independent contractor. The purpose of the federal leasing regulations is to prevent motor carriers from avoiding

responsibility for the negligence of their drivers through the owner-operator relationship. In Saullo v. Douglas, 957 So.2d 80, 83 (Fla. 5th DCA 2007), the Court notes:

> One of the primary reasons Congress expanded the province of the Secretary, and thus, the ICC,FN2 was "to protect the public from the tortious conduct of judgment-proof operators of interstate motor carrier vehicles," by requiring motor carriers "to assume full direction and control of leased vehicles." See Price v. Westmoreland, 727 F.2d 494, 496 (5th Cir.1984). A fair reading of the leasing regulations yields the notion that they were specifically intended to prevent motor carriers from avoiding responsibility for the negligence of their drivers through the use of an owner-operator relationship. Logo Liability, 33 Transp. L.J. at 6. The ICC effectuated this purpose by promulgating leasing regulations requiring, among other things, that leases be in writing and "provide for the exclusive possession, control, and use of the equipment, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of said contract, lease or other arrangement ...." (emphasis added). See 49 C.F.R. 1507.4 (1974). FN3 Moreover, the regulations require motor carriers that use leased equipment to provide the lessor with a placard that contains information identifying the motor carrier for whom the equipment is being operated. Logo Liability, 33 Transp. L.J. at 6 (citing 49 C.F.R. 390.21 (2005)). The placard is usually affixed to the door of the tractor. Before the regulations were amended in 1986, it was the motor carrier's responsibility to retrieve the placards when the lease terminated. Id. at 6 (citing 49 C.F.R. 1507.4(d)(1) (1974)).

Under the leasing regulations, the lessor-truck driver was deemed to be the "statutory employee" of the lessee motor carrier, who was liable as a matter of law for the negligence of the driver. In Saullo, the Court further notes:

> In 1986, however, the ICC amended the leasing regulations to clarify that it never intended "to assign liability based on

> the existence of placards or to interfere with otherwise applicable State law." Lease & Interchange of Vehicles (Identification Devices), 3 I.C.C.2d 92, 93–94 (1986). Under the amended regulations, the motor carrier was no longer required to obtain a receipt from the driver when the driver returned the placard upon termination of the lease. See Graham v. Malone Freight Lines, Inc., 948 F.Supp. 1124, 1133 n. 14 (D.Mass.1996); 49 C.F.R. 1057.4(d) (1985). At the time of the 1986 amendments, the ICC explained:
>
> As noted by the comments, certain courts have relied on Commission regulations in holding carriers liable for the acts of equipment owners who continue to display the carrier's identification on equipment after termination of the lease contract. We prefer that courts decide suits of this nature by applying the ordinary principles of State tort, contract, and agency law. The Commission did not intend that its leasing regulations would supersede otherwise applicable principles of State tort, contract, and agency law and create carrier liability where none would otherwise exist. Our regulations should have no bearing on this subject. Application of State law will produce appropriate results
>
> .....
>
> The ICC yet again amended the leasing regulations in 1992, this time specifically to address the independent contractor issue. The amended leasing provision, currently *85 codified at 49 C.F.R. 376.12, added subsection (c)(4), that provides:
>
> Nothing in the provisions required by paragraph (c)(1) of this section is intended to affect whether the lessor or driver provided by the lessor is an independent contractor or an employee of the authorized carrier lessee. An independent contractor relationship may exist when a carrier lessee complies with 49 U.S.C. 14102 and attendant administrative requirements.

> 49 C.F.R. 376.12(c)(4) (2007). Paragraph (c)(1) requires the lease to "provide that the authorized carrier lessee shall have exclusive possession, control, and use of the equipment for the duration of the lease. The lease shall further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the equipment for the duration of the lease." 49 C.F.R. 376.12(c)(1) (2007). When the 1992 amendments were adopted, the ICC commented:
>
> The Commission's regulations are silent on the agency status of lessors, and our decisions are clear that the Commission has taken no position on the issue of independence of lessors.... While most courts have correctly interpreted the appropriate scope of the control regulation and have held that the type of control required by the regulation does not affect "employment" status, it has been shown here that some courts and State workers' compensation and employment agencies have relied on our current control regulation and have held the language to be prima facie evidence of an employer-employee relationship. These State agencies often find that the current regulation evidences the type of control that is indicative of an employer-employee relationship. We conclude that adopting the proposed amendment will reinforce our view of the neutral effect of the control regulation and place our stated view squarely before any court or agency asked to interpret the regulation's impact.
>
> Petition to Amend Lease & Interchange of Vehicle Regulations, 8 I.C.C.2d 669, 670–72 (1992)(emphasis supplied). This comment, especially when considered in conjunction with the ICC's 1986 comments, suggests that the view imposing strict vicarious liability was not the result intended by the leasing regulations.

Saullo, supra, at 84-86.

The Court notes that 49 CFR 367.12(c) provides:

> **376.21 General exemptions.**
>
> Except for § 376.11(c) which requires the identification of equipment, the leasing regulations in this part shall not apply to:
>
> ....
>
> (c) Equipment leased without drivers from a person who is principally engaged in such a business.

The ITA includes the acknowledgment of SEIDS and Howard Bryant that Howard Bryant would perform delivery services as an independent contractor:

> 6. **Independent Contractor Relationship.** INDEPENDENT DELIVERY and CONTRACTOR expressly acknowledge and agree that the services of CONTRACTOR will be rendered as an independent contractor and not as an employee.

The ITA includes specific obligations of the parties in paragraphs a through j, which are based on the parties' agreement of Howard Bryant's status as an independent contractor and not as an employee. Among these obligations is the provision acknowledging Howard Bryant's agreement to obtain insurance:

> j. During the term of this agreement, CONTRACTOR shall obtain the insurance described in Exhibit D. INDEPENDENT DELIVERY shall be named as an additional insured on all insurance required under this agreement and no insurance may be canceled unless INDEPENDENT DELIVERY is given Twenty (20) days advance written notice.

Exhibit D defines the minimum insurance requirements for independent owner-operators for SEIDS, including general liability, stating the required coverage and limits thereof, and automobile liability, stating the required coverage and limits thereof. The "Additional Conditions" include:

> Additional Insured/Loss Payees
>
> Lessor (As required by written contract)
>
> Additional Insured: Customer as designated by Independent Delivery
>
> Waiver of Subrogation (As required by contract)

Exhibit D further requires Cargo Coverage, Umbrella Liability, and Worker's Compensation coverage.

Howard Bryant signed an acknowledgment of and agreement to the terms and conditions of the insurance program, which was revised effective 3/31/2005 (Dkt. 21-8, p. 59). The statement of revision is directed to "Owner Operators" and is dated 4/28/2005. The statement of revision specifies the monthly costs for the following coverages: Auto Liability and Physical Damage - $2,000,000 limit, General Liability - $2,000,000 limit, Occupational Accident - various limits, Loss Fund (difference of $2,500 deductible to the point insurance coverage starts.

The statement of revision further provides that the deductible on the auto liability program is $500,000. "However, the OWNER OPERATOR will be responsible for the first $2,500 if they are under dispatch to IDS. OWNER OPERATORS under dispatch to a third party must obtain a separate endorsement; otherwise the full $500,000 will apply." The statement of revision further provides that "OWNER OPERATORS can secure their own insurance as long as the appropriate limits are carried. IDS must be

listed as a named insured and the carrier must have an A.M. Best Rating of A-VIII or better."

The ITA includes an Indemnification and Hold Harmless provision:

> 9. Indemnification and Hold Harmless. The CONTRACTOR shall indemnify and hold INDEPENDENT DELIVERY harmless from any liabilities, claims, or demands (including the costs, expenses, and attorney's fees on account thereof) resulting from the injury or death of a person driving, operating, repairing, maintaining, loading or unloading the LEASED EQUIPMENT or from the injury or death of a person making a delivery for INDEPENDENT DELIVERY'S customers. Furthermore, CONTRACTOR shall indemnify and hold INDEPENDENT DELIVERY harmless from any liabilities, claims, or demands (including the costs, expenses, and attorney's fees on account thereof) that may be made:
>
> a. by anyone for injuries to persons or damage to property, including theft, resulting from acts or omissions of the CONTRACTOR, or by persons furnished by the CONTRACTOR; OR
>
> b. by persons furnished by CONTRACTOR for injuries or damages claimed under Workers' Compensation or similar acts.

Howard Bryant executed Addendum I, which is an agreement to as to liability or physical damage arising out of vehicle rented by Independent Delivery Services, Inc. on behalf of Howard Bryant. Howard Bryant further agreed to maintain policies of insurance for Auto Liability and Physical Damages, with a company acceptable to Independent Delivery Services, Inc. with the following coverages and limits:

Auto Liability Any Auto	$1,000,000 each occurrence

Auto Physical Damage	
Comprehensive	ACV less $2,500 deductible
Collision	ACV less $2,500 deductible

Addendum I further provides that Independent Delivery Services, Inc. will be included as an Additional Insured on the above policy or policies.

C. Complaint in the Underlying Case

In his Complaint against FirstLease, Howard Bryant alleged that FirstLease rented a moving truck to him on 5/3/2006. (Dkt. 1-2, p. 3). Howard Bryant further alleged that the moving truck had a retractable rear door which originally came with two thick black straps bolted into the door, which allowed individuals to safely close the door by pulling down on the straps. Howard Bryant alleged that, at the time FirstLease rented the moving truck to him, both of the original black straps had been broken off, and instead of replacing the straps, FirstLease tied a thin "tie strap" to the handle of the retractable door, and furnished the moving truck him in an unsafe condition. (Dkt. 1-2, p. 3).

Howard Bryant further alleged that, on 5/13/2006, he attempted to close the retractable door by pulling on the thin "tie strap," which snapped, causing him to fall backwards and severely injure his arm. Howard Bryant alleged that FirstLease was negligent by committing one or more of the following negligent acts and/or omissions regarding the subject moving truck:

a. Negligently failed to repair and/or replace the original black straps which had been bolted into the rear door; and/or

b. Negligently tied a "tie strap" to the rear door handle to be used to close the door where said tie strap was not properly affixed to the door, was not bolted into the door and was unreasonably weak for this particular use;

c. Negligently rented the subject moving truck in the above-described condition when Defendant **FIRSTLEASE, INC.** knew or in the exercise of reasonable care should have known that there was an unreasonable risk of the "tie strap" snapping and/or detaching from the rear door while it was being pulled; or

d. Negligently failed to warn Plaintiff of the risk and/or danger of the "tie strap" snapping and/or detaching from the subject rear door during its use; and/or

e. Negligently and/or intentionally made a monetary decision not to properly repair the original, black, bolted straps in the subject door, but instead tied a flimsy "tie strap" to the door handle as a cheaper alternative despite the unreasonable risk to human heal and safety caused by said decision; and/or

f. Negligently violated its own policies and procedures with regard to only renting safe and fully functioning moving trucks to its customers; and/or

g. Negligently violated applicable business standards, codes, laws and/or statutes; and or

h. Was otherwise negligent in the inspection, repair, maintenance and/or rental of the subject moving truck.

The above acts and omissions took place while the moving truck was in the custody of FirstLease. Howard Bryant was injured by the alleged acts and omissions of FirstLease while he was using the truck to deliver furniture.

Harco, as insurer of FirstLease, paid a settlement to Howard Bryant. In the Settlement Agreement and Release of All Claims, FirstLease did not admit liability for its alleged negligence. Howard Bryant acknowledged:

> H. **NO ADMISSION OF LIABILITY**: BRYANT understands and agrees that this Release is a good faith compromise of disputed claims and that this Release is not to be construed as an admission of liability by the Released Parties and that the Released Parties deny any liability.

D. Florida Tort Law

FirstLease is in the business of renting motor vehicles. The Vehicle Rental Agreement established that the duty of "Regular Maintenance" and "P.M. Inspections" was with FirstLease. In the Vehicle Rental Agreement (par. 2), Howard Bryant acknowledged that the vehicle was the property of FirstLease. Howard Bryant filed suit against FirstLease for its alleged negligence in failing to repair the vehicle, failing to exercise due care in renting the vehicle,, and failing to warn Howard Bryant of the danger. The Complaint is directed to acts and omissions within the exclusive control of FirstLease prior to the Rental Agreement, which allegedly proximately caused Howard Bryant's injuries.

In Allstate Ins. Co. of Canada v. Value Rent-a-Car of Florida, Inc., 463 So.2d 320 (Fla. 5th DCA 1985), the Court observed:

> Under the dangerous instrumentality doctrine, owners of motor vehicles are liable for injuries which are caused by the operation of the vehicle. Negligent operators of motor vehicles are also liable for injuries they cause. Common law principles of negligence establish this responsibility. Where two persons are liable for an injury then the one who actually caused the injury is primarily liable and the other person may

> obtain indemnity from him for any payments made to the injured person. See Seabord Air Line Railway Company v. American District Electric Protective Company, 106 Fla. 330, 143 So. 316 (1932). Thus, an automobile owner who is only vicariously liable for injuries caused by another person's operation of his vehicle is entitled to indemnification from the negligent driver. Rebhan Leasing Corp. v. Trias, 419 So.2d 352 (Fla. 3d DCA 1982), review denied, 427 So.2d 738 (Fla.1983); Hertz Corp. v. Richards, 224 So.2d 784 (Fla. 3d DCA 1969); Allstate Insurance Company v. Fowler, 455 So.2d 506 (Fla. 1st DCA 1984).

In this case, the only tortfeasor, as alleged in Howard Bryant's Complaint, was FirstLease. In the Rental Agreement, FirstLease and Howard Bryant agreed to the priority of insurance coverage in the event of personal injuries and property damage to third parties. Howard Bryant is not a third party, and the factual scenario of this case does not include any negligent act by Howard Bryant in the operation of the vehicle rented from Firstlease. The priority of liability insurance coverage is not involved where an operator of a motor vehicle seeks compensation for personal injuries from the owner of the motor vehicle on the basis of primary liability, not vicarious liability. Primary liability is "A liability for which a person is directly responsible as contrasted with one which is contingent or secondary." Black's Law Dictionary 823.

The Hillsborough County Circuit Court determined that the indemnification clause of the Vehicle Rental Agreement was unenforceable; there is no contractual indemnification available to FirstLease from Howard Bryant. Because FirstLease is the alleged tortfeasor, common law indemnification is not available to FirstLease.

Harco is seeking contractual indemnification for the settlement paid to Howard Bryant and the cost of FirstLease's defense in the underlying litigation from Zurich based on the terms of the Zurich policy which provided coverage for bodily injury to third persons and for property damage to third persons to SEIDS, Howard Bryant and