

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 12-23856-CIV-MORENO

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA,

Plaintiffs,

vs.

ROMAN A. BENITEZ and INTERNATIONAL
CONTAINER REPAIR COMPANY, LLC,

Defendants.

_____ /

ORDER GRANTING MOTION TO DISMISS

THIS CAUSE came before the Court upon Motion to Dismiss (**D.E. No. 12**), filed on **November 19, 2013**. The Court granted an extension of time until December 14, 2012 to respond to the complaint. As of the date of this Order, Plaintiff has not responded to the motion to dismiss.

THE COURT has considered the motion and the pertinent portions of the record, and being otherwise fully advised in the premises, it is

ADJUDGED that the motion is GRANTED and the case is DISMISSED. Plaintiff's failure to respond to the motion to dismiss is grounds for granting the motion by default. *See* S.D. Fla. 7.1(c). In addition, the Court agrees with the arguments contained in the motion to dismiss that this is an improper derivative action under Florida law because the plaintiff was not a member of the limited liability company when the alleged wrongful acts occurred. Moreover, the Court finds there is no diversity jurisdiction because in a federal derivative action the Court aligns the parties for jurisdictional purposes according to their real interest. *Liddy v. Urbanek*, 707 F.2d 1222, 1224 (11th

Cir. 1983).

DONE AND ORDERED in Chambers at Miami, Florida, this 19th day of June, 2013.



FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies provided to:

Counsel of Record