IN THE SUPREME COURT OF FLORIDA

CASE NUMBER: 83,149

ALLSTATE INSURANCE COMPANY,

Petitioner,

vs.

JOYCE LANGSTON on behalf of
minor child, SHANARD LANGSTON,

Respondent.
_____/

ANSWER BRIEF OF RESPONDENT ON JURISDICTION

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE FOURTH DISTRICT COURT OF APPEAL
CASE NUMBER: 93-02354

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SUMMARY OF ARGUMENT

The Fourth District Court of Appeal did not create new law in its decision in Allstate Insurance Company v. Langston, 18 Fla. L. Weekly D2295 (Fla. 4th DCA October 27, 1993). The Fourth District Court of Appeal merely followed the law as developed by this Court and the decisions of the other District Courts. Specifically, the Fourth District Court of Appeal held that for the Petitioner to be successful in the granting of an extraordinary remedy of certiorari, it had to show that the disclosure of the requested documents "may reasonably cause material injury of an irreparable nature." Id. See also Martin-Johnson, Inc. v. Savage, 509 So. 2d 1097, 1100 (Fla. 1987); Brooks v. Owens, 97 So. 2d 693 (Fla. 1957) (Where there is no full, adequate and complete remedy by appeal after final judgment, certiorari is proper where court acted without and in excess of jurisdiction, or order does not conform to essential requirements of law and may cause material injury). The Petitioner failed to sustain that burden, and therefore, the Fourth District Court of Appeal properly denied the request for certiorari. The overall theme of the Petitioner's Initial Brief is that the production of irrelevant evidence creates a material injury of an irreparable nature, and thus, the granting of certiorari would have been proper in the instant case. However, while it is true that only relevant evidence should be admissible in the trial court, whether evidence is admissible is not the focus of the Court in a certiorari proceeding. Specifically, the focus in certiorari proceedings is on whether the moving party has

demonstrated irreparable injury. If the moving party is unable to prove irreparable injury, an interlocutory appeal is not permitted under the Rules of Appellate Procedure and the only remedy is to bring a plenary appeal of the final judgment.

ARGUMENT

THE PETITIONER FAILED TO PROVE THAT IT WOULD SUFFER MATERIAL INJURY OF AN IRREPARABLE NATURE BY THE PRODUCTION OF THE REQUESTED DOCUMENTS, AND THEREFORE, THE FOURTH DISTRICT COURT OF APPEAL WAS CORRECT IN DENYING, IN PART, THE WRIT OF CERTIORARI.

Contrary to the Petitioner's assertions, the Fourth District Court of Appeal did not create new law in its decision in Allstate Insurance Company v. Langston, 18 Fla. L. Weekly D2295 (Fla. 4th DCA October 27, 1993). The Fourth District Court of Appeal merely followed the law as developed by this Court and the decisions of the other District Courts. Specifically, the Fourth District Court of Appeal held that for the Petitioner to be successful in the granting of an extraordinary remedy of certiorari, it had to show that the disclosure of the requested documents "may reasonably cause material injury of an irreparable nature." Id. See also Martin-Johnson, Inc. v. Savage, 509 So. 2d 1097, 1100 (Fla. 1987); Brooks v. Owens, 97 So. 2d 693 (Fla. 1957) (Where there is no full, adequate and complete remedy by appeal after final judgment, certiorari is proper where court acted without and in excess of jurisdiction, or order does not conform to essential requirements of law and may cause material injury). The Petitioner failed to sustain that burden, and therefore, the Fourth District Court of Appeal properly denied the request for certiorari.

The overall theme of the Petitioner's Initial Brief is that the production of irrelevant evidence creates a material injury of an irreparable nature, and thus, the granting of certiorari would have been proper in the instant case. However, while it is true

that only relevant evidence should be admissible in the trial court, whether evidence is admissible is not the focus of the Court in a certiorari proceeding. Specifically, the focus in certiorari proceedings is on whether the moving party has demonstrated irreparable injury. If the moving party is unable to prove irreparable injury, an interlocutory appeal is not permitted under the Rules of Appellate Procedure and the only remedy is to bring a plenary appeal of the final judgment.

As to the merits of the Petitioner's arguments, in Martin-Johnson, Inc. v. Savage, 509 So. 2d 1097, 1100 (Fla. 1987), this Court delineated the test for the proper use of certiorari. Specifically, this Court opined that "common law certiorari is an extraordinary remedy." Id. at 1098. Furthermore, this Court referred to the Advisory Committee note to the 1977 Revision of the Florida Appellate Rules, and quoted:

> [I]t is extremely rare that erroneous interlocutory rulings can be corrected by resort to common law certiorari. It is anticipated that since the most urgent interlocutory orders are appealable under this rule, there will be very few cases where common law certiorari will provide relief.

Id. at 1098-99. [citation omitted]. Therefore, although it is clear that certiorari is the proper vehicle by which a Petitioner can attempt relief from an erroneous discovery order, it should only be granted where an appeal "after final judgment is unlikely to [provide] an adequate remedy because once discovery is wrongfully granted, the complaining party is beyond relief." Id.

To prevail, the Petitioner must show that the harm which might result from the requested discovery is the "type of 'irreparable

harm' contemplated by the standard of review for certiorari." Id. Basically, in these types of proceedings, "an order may be quashed only for certain fundamental errors." Id. Not every erroneous discovery order creates certiorari jurisdiction, as adequate redress by plenary appeal from a final judgment is available.

As with the requested discovery in the Martin-Johnson case, the Petitioners in the instant case have failed to demonstrate that material injury of an irreparable nature would be created by the production of the requested discovery. First, contrary to the Petitioner's assertions, the Fourth District Court of Appeal did not "find" - let alone "expressly f[ind]" - that the requested documents were "completely irrelevant." [Petitioner's Initial Brief at 3]. Appellate courts do not make findings of fact in these types of proceedings. Furthermore, the language used by the Fourth District Court of Appeal was simply: "We do agree that from the face of the request that the documents sought in paragraphs 3, 4 and 5, consisting of internal procedural memos, claims manuals and standards for proper investigation of claims, appear irrelevant to a lawsuit involving a claim for uninsured motorist benefits where no claim of bad faith or unfair claim practices has been made." Langston. [emphasis added]. Therefore, the Petitioner's characterization of the language used by the Fourth District Court of Appeal is misleading.

Furthermore, the Petitioner mischaracterized the holding of East Colonial Refuse Service, Inc. v. Velocci, 416 So. 2d 1276 (Fla. 5th DCA 1982), by claiming that the court had "presumed" harm

where irrelevant discovery had been ordered to be produced. [Petitioner's Initial Brief at 3]. In East Colonial, the Fifth District Court of Appeal simply held that discovery "must be relevant to the subject matter of the case and be admissible or reasonably calculated to lead to admissible evidence in the case." Id. at 1277. The case was further decided on the theory of privileged information, and that the requested documents did not have to be produced because of the existence of a privilege. Specifically, the requesting party was seeking a customer list that constituted a "trade secret." Id. at 1278. Not only did the Fifth District not hold that the information was "completely irrelevant" - as stated by the Petitioner - but "left the door open," so to speak, for the requesting party to submit an additional request if it could be shown that there existed a right to the accounting. Id. Nonetheless, nowhere in the opinion does it suggest that there existed a presumption of harm in irrelevant information.

In the instant case, the Petitioner had originally objected to the discovery requests as irrelevant. Langston. The trial court obviously overruled that objection, as it ordered the Petitioner to provide the requested documents. On appeal, for the Petitioner to succeed in a request for certiorari, it was the Petitioner's burden to show that compliance with the trial court's order would result in "material injury of an irreparable nature." The Petitioner failed to sustain that burden. In its most simple terms, the Fourth District Court of Appeal's holding was that the Petitioner must sustain this burden to succeed in a request for certiorari,

regardless of whether the requested documents were relevant. Unfortunately, the Petitioner is confusing two (2) distinct arguments. Before the courts can consider the merits of the relevancy argument, the Petitioner must prove that it is entitled to certiorari by proving material injury of an irreparable injury. After that burden has been sustained, the courts can consider the second issue of whether the requested information was relevant to the underlying causes of action. If the Petitioner cannot sustain its burden in certiorari, its only remedy under the Rules of Appellate Procedure is to conduct a plenary appeal after final judgment has been entered.

The Petitioner argued that it had a "fundamental right to maintain the integrity of [its] entire business operation." [Petitioner's Initial Brief at 5]. However, despite the Petitioner's choice of words, it is unclear how the disclosure of the requested policy manuals would "harm" the Petitioner's business, and furthermore, how the Petitioner's maintenance of its business rises to a "fundamental right" as envisioned by this Court in Martin-Johnson.[1] Additionally, the Petitioner attempts to characterize the requested documents as a "fishing expedition"[2]

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[1] Interestingly, nowhere in the Petitioner's Brief does Counsel explain how the Petitioner will be irreparably harmed by the disclosure of the requested documents. At the very least, this issue had to be addressed by the Petitioner to argue that certiorari should have been granted.

[2] The Fourth District Court of Appeal specifically allowed some "fishing" in its opinion in Parker v. Parker, 182 So. 2d 498 (Fla. 4th DCA 1966), as long as the parties stay within the Rules of Civil Procedure.

where the Counsel for the Respondent seeks documents to be utilized against the Petitioner in other litigation.[3] However, these bare-faced accusations are not supported by the record, and should therefore, not be considered by this Court.

Therefore, the Fourth District Court of Appeal did not err in denying, in part, the Petitioner's writ of certiorari. As stated previously, for the Petitioner to succeed in a request for certiorari, it was the Petitioner's burden to show that compliance with the trial court's order would result in "material injury of an irreparable nature." The Petitioner failed to sustain that burden. The bottom line is that before the courts can consider the merits of the Petitioner's relevancy argument, the Petitioner must prove that it is entitled to certiorari by showing material injury of an irreparable injury. After that burden has been sustained, the courts can consider the second issue of whether the requested information was relevant to the underlying causes of action. Since the Petitioner failed to prove that it is entitled to certiorari, the Fourth District Court of Appeal's decision should be affirmed and the Petitioner should be compelled to provide the requested documents.

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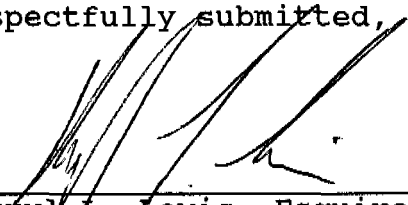
[3] In fact, the Petitioner admits in the Initial Brief that it does not know how the Respondent intends to use the requested documents, so how can it claim that the Respondent intends to use the documents in other litigation? [Petitioner's Brief at 7].

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests that this Court affirm the decision of the Fourth District Court of Appeal in all respects.

Respectfully submitted,



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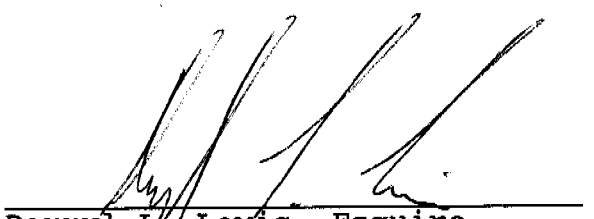
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief of the Respondent was mailed this 4th day of April, 1994 to: RICHARD SHERMAN, ESQUIRE, 1777 South Andrews Avenue, Suite 302, Fort Lauderdale, Florida 33316, and to DAVID TAYLOR, ESQUIRE, One Ten Tower, 110 Southeast 6th Street, Suite 1960, Fort Lauderdale, Florida 33301.



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