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CLERK, SUPREME COURT
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IN THE SUPREME COURT OF FLORIDA

ALLSTATE INSURANCE COMPANY,

Appellant/Petitioner,

v.

ROBERT BOECHER,

Appellee/Respondent.
_____/

CASE NO.: 92,436
DCA NO.: 97-2644

FLORIDA BAR NO.: 983306

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE FOURTH DISTRICT COURT OF APPEAL

PLAINTIFF/RESPONDENT'S AMENDED ANSWER BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF CITATIONS

PREFACE

After the trial court overruled Petitioner, Allstate Insurance Company's, objections to two of Respondent's discovery requests, Allstate petitioned the Fourth District Court of Appeal for writ of certiorari. The Fourth District denied the petition, and explained why the amendments to Rule 1.280, Florida Rules of Civil Procedure on limiting discovery from expert witnesses, do not apply to the situation presented by these facts. Plaintiff/Appellee/Respondent will be referred to as Plaintiff, and Defendant/Appellant/Petitioner, will be referred to as Allstate.

The following abbreviations will be used:

A - Appendix attached to Allstate's original Petition

PA - Appendix attached to Plaintiff's original Response

STATEMENT OF CASE AND FACTS

Plaintiff generally accepts Allstate's statement of the case and facts. However, he does wish to include several material facts which were omitted, and to correct several facts with which he disagrees.

First, Allstate maintains that Plaintiff failed to notice Allstate's objections to the interrogatories which are the subject of this appeal (See, Petitioner's Brief, p. 5). This assertion belies the record before the trial court (A 35-36). Plaintiff's counsel noticed both Allstate's objections to supplemental

interrogatories 3 and 4 for the July 1, 1997 hearing as well as Biodynamic's objections to interrogatories 9 and 10 (A 35-36).

Allstate wishes to convince this court that the actions taken in opposition to Plaintiff's discovery by Biodynamics somehow relieved Allstate of its own obligations in that vein, and can somehow augment its own position here. This appeal, like that which occurred below, focuses solely on the narrow issue of whether a party may be subjected to more invasive discovery than an expert witness. Allstate's brief contains a discussion of Biodynamics' fastidious attempts to challenge Plaintiff's interrogatories. Further, Allstate references the affidavit filed by the Vice President of Biodynamics, as well as other supporting affidavits, to explain the hardship Biodynamics would face if it had to obtain the information sought in the interrogatories. (See, Petitioner's Brief at p. 5). The efforts of Biodynamics are irrelevant to this appeal, because the discovery request from which this case arises was directed to Allstate only, not to the witness from Biodynamics.

Noticeably absent from Allstate's statement of the facts is any reference to an affidavit it filed. As this court will see, and as the Fourth District saw, Allstate never filed any affidavit in support of its position with the trial court. Further, although it filed a detailed motion for reconsideration of the trial court's order, never did it file any sworn testimony of any kind (A 49-

52). Still, Allstate has asked this Court for its unprecedented indulgence to allow it to file those affidavits at this time.[1]

The Fourth District noted Allstate's failure to produce an adequate record entitling it to relief. Allstate Insurance Co. v. Boecher, 705 So. 2d 106, 108 (Fla. 4th DCA 1998). Instead, it found that Allstate filed nothing to suggest "that its burden in providing this information is any more difficult than the ordinary retrieval of common, routine business records." The Fourth District denied Allstate's petition. Id.

SUMMARY OF ARGUMENT

Plaintiff sent timely, formal notice to Allstate advising it of his intention to call up Allstate's objections to interrogatories 3 and 4 for hearing. This court should prohibit Allstate from arguing that the trial court heard argument without proper notice.

The Fourth District correctly found that the recent amendments to Florida Rules of Civil Procedure 1.280, do not govern where discovery is sought from a party to the litigation, and not to a retained expert. Boecher, 705 So. 2d at 107. Rule 1.280 applies only to expert witnesses. See, Elkins v. Syken, 672 So. 2d 517 (Fla. 1996). The line of cases which ultimately culminated in this Court's decision in Elkins reflects the logical and public policy reasons for this important distinction; namely, that a private

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[1]Plaintiff's response in opposition to Allstate's motion was previously filed separately with this Court.

citizen testifying on behalf of a party deserves more privacy with respect to his or her financial affairs than does a party who is directly involved and whose potential for bias outweighs such privacy concerns.

Finally, Allstate simply failed to include evidence in the record to support the position it now takes. It never filed an affidavit before the trial court swearing to reasons why the requests were burdensome and the information difficult for it to assemble. Because Allstate simply relied upon an unsworn motion for reconsideration of the trial court's initial order overruling its objections, and failed to file any supporting affidavits or testimony, the Fourth District simply found there was not support in the record to uphold its boilerplate objections. This court should refuse Allstate's unprecedented request to file affidavits at this level of the proceedings.

ARGUMENT

POINT ON APPEAL

THIS COURT SHOULD ADOPT THE FOURTH DISTRICT'S OPINION IN ALLSTATE INSURANCE CO. V. BOECHER, 705 SO. 2D 106 (FLA. 4TH DCA 1998) BECAUSE IT ADDRESSES FACTUAL SITUATIONS DISTINGUISHABLE FROM RULE 1.280, FLORIDA RULES OF CIVIL PROCEDURE, AND IS ALSO SUPPORTED BY THE RECORD, LOGIC AND PUBLIC POLICY.

The Fourth District denied Allstate's petition for certiorari review of an order overruling objections to interrogatories in an automobile accident case. In its opinion, the court methodically explained why the recent amendments to Rule 1.280, Florida Rules of

Civil Procedure, limiting discovery from expert witnesses, do not apply when the discovery sought is from a party, and not an expert witness. Contrary to Allstate's characterizations, Judge Farmer's opinion is not that of a reckless renegade seeking to create presumptions contrary to record evidence, intentionally attempting to choke defendants with burdensome discovery. Instead, the Fourth District carefully explained that the record before it was deficient to support Allstate's contention that its burden in providing the information was any more difficult than the ordinary retrieval of routine business records. Boecher, 705 So. 2d at 108. The opinion also distinguished why the discovery sought from a party should be produced when the same discovery could not be sought from an expert witness. As the court wrote:

> The case and the rule demonstrate that the nature and protection for a *party* from relevant discovery requests is qualitatively different from that afforded to someone who is merely a witness.

(Emphasis an original)(Citations omitted). Id. at 107.

The Fourth District was eminently correct in its Boecher decision, and this court should uphold its ruling.

A. ***Allstate's objections were properly noticed for hearing and thus Allstate cannot claim it was prejudiced by lack of notice.***

Allstate maintains that the trial court overruled its objections to supplemental interrogatories 3 and 4, despite Plaintiff's failure to notice the objections for hearing. (See, Petitioner's Brief at pp. 2, 5) Allstate cites to the argument of one of its attorneys (not the attorney of record in the case) who

argued that he did not receive notice of the hearing on Allstate's objections, only notice of Biodynamic's objections (A 36). As Plaintiff's counsel pointed out to the court, and the trial court obviously agreed, the objections were in fact noticed (A 35-36). Thus, this court may freely consider this issue on the merits alone.

B. ***Both the trial court and the Fourth District were correct in holding that discovery from a party is qualitatively different than discovery from an expert witness (especially a non-medical expert witness):***

In Elkins v. Syken, 672 So. 2d 517 (Fla. 1996), this Court adopted the Third District's opinion in Syken v. Elkins, 644 So. 2d 539 (Fla. 3d DCA 1994). In introducing the opinion, this Court wrote:

> This is a petition to review the Third District Court of Appeal's en banc decision in Syken v. Elkins, 644 So. 2d 539 (Fla. 3d DCA 1994), which concerns the appropriate scope of discovery necessary to impeach the testimony of an opponent's expert medical witness.

Elkins, 672 So. 2d at 518. (Emphasis added).

Prior to establishing the criteria for medical expert impeachment, the Third District explained its reasoning for limiting the discovery:

> In the context of medical expert witnesses, courts in Florida have long held that the trial judge must balance the competing interest of the relevancy of the discovery information sought as impeachment information as against the burdensomeness of its production.
>
> * * *

> Upon en banc consideration, we decide that in order to demonstrate the probability of bias, it is sufficient for a doctor to be asked to give an approximate estimate for IME's and total patients seen in a year. The figures given need only be an honest estimate, and do not have to be an exact number. . .
>
> * * *
>
> [W]e adopt the reasoning of Chief Judge Schwartz . . . and Judge Jorgensen . . . and conclude that decisions in this field have gone too far in permitting burdensome inquiry into the financial affairs of physicians, providing information which 'serves only to emphasize the unnecessary detail that which would be apparent to the jury on the simplest cross examination: that certain doctors are consistently chosen by a particular side in personal injury cases to testify on its respective behalf.'

Syken v. Elkins, 644 So. 2d at 544 - 545 (citations omitted) (emphasis added). Further evidence that the guidelines set forth in Elkins and its progeny apply only to medical experts is found in a review of the eight criteria set forth by both the Third District and adopted by this court. For example, criterion number 1 states "the medical expert may be deposed either orally or by written deposition." Elkins v. Syken, 672 So. 2d at 521. Criterion number 4 allows counsel to inquire of the expert as to the "approximate number of IME's that he or she performs in one year." Id. Finally, number 7 requires that "the patient's privacy must be observed." Id. Thus, three of the eight guidelines specifically reference factors relevant only to the testimony of medical experts, further buttressing the argument that the Elkins factors do not apply to the facts of this case.

In LeJeune v. Aikin, 624 So. 2d 788 (Fla. 3rd DCA 1993), Chief Judge Schwartz wrote a special concurrence which served as the proverbial birth of the Elkins movement. There, Judge Schwartz expressed concern that courts had gone too far in permitting inquiry into the private financial affairs of testifying physicians. Id. at 789. The core of Judge Schwartz's concern was expressed in the following sentence:

> I tend to believe therefore that our courts have misbalanced 'the competing interests that would be served by granting discovery or by denying it,' with the possible result that the discovery process is being used improperly as a tool to force particular doctors from being involved in the judicial process at all or to extract settlements in individual cases. Id. (Citations omitted)(Emphasis added).

Clearly, Judge Schwartz's concern about the chilling effect, later reiterated by this Court in Elkins, arose out of his fear that physicians in private practice -- who as part of their practice evaluate injured persons -- are essential to the litigation process. He expressed no concern that the proverbial "hired gun" (someone whose career is devoted merely to testifying) should be afforded the same protection as practicing physicians who engage in litigation as only one part of their multi-faceted medical practices. The courts have thus afforded protection to physicians engaged in the practice of medicine, from being forced to produce personal financial statements and tax returns which reveal unnecessary information about their private lives, and unnecessarily probe into matters irrelevant to the plaintiff's litigation. Because this court has found that such information may

be obtained less intrusively, the Elkins factors are there to guide litigants and attorneys in discovery bias of medical expert witnesses.

In Carrera v. Casas, 695 So. 2d 763 (Fla. 3d DCA 1997), the case with which the Fourth District certified conflict and that which Allstate urges this Court to approve, the Third District was faced with the exact same concerns and questions as were presented by Elkins. In Carrera, plaintiffs again sought discovery from an expert witness who was the IME doctor. The Third District refused to allow plaintiffs to bypass the guidelines of Elkins where they simply sought to obtain from the party defendants the exact same information they could not obtain from the expert IME witness. Certainly, plaintiffs could not establish any bias of the defendants themselves in that case, who had only hired these particular IME doctors to testify on their behalf in this one case. Thus, in Carrera, the discovery sought from the party was done so pretextually; the plaintiffs there were merely trying to obtain prohibited discovery from the expert witnesses by attempting to avoid Rule 1.280 as well as this Court's prescriptions in Elkins.

Conversely, here the bias sought is against a multi-million dollar insurance company that does not require protection from intrusion into its "private life." In this case, a unique confluence of factors considered by both the trial court and the Fourth District, prevents this Court from granting Allstate's petition. First, Plaintiff brought this lawsuit against his own underinsured motorist carrier, Allstate. Plaintiff, who has paid

numerous premiums to entitle him to insurance coverage for injuries caused by the negligence of others, is entitled to know how much his own carrier has paid to these "hired gun" experts to testify against him and other plaintiffs. Second, the expert of Biodynamics Corporation retained by Allstate has not been hired to testify as a treating or evaluating physician, but rather as an expert from a corporation of testifying experts on biomechanical causation (PA 2). Finally, Allstate as a party involved in thousands of lawsuits is capable of "bias" in the retention of experts (unlike a defendant who merely is involved in one case and retains an expert witness one time). Thus, these facts are distinguishable from both Elkins and Carrera and the denial of Allstate's position should be upheld.

C. ***The discovery sought from Allstate as a party is clearly relevant.***

Allstate maintains that the discovery requested by supplemental interrogatories 3 and 4 is not relevant to the litigation of this lawsuit. Plaintiff certainly agrees that discovery in civil cases must be relevant to the subject matter of the case and must be admissible or reasonably calculated to lead to admissible evidence. See, Allstate Insurance Co. v. Langston, 655 So. 2d 91, 94 (Fla. 1995). The Fourth District already found "the information sought in this case is indisputably relevant and meaningful to impeaching the witness." Boecher, 705 So. 2d at 107.

Before this Court issued its opinion in Elkins, numerous cases discussed the relevance of the amount of annual income an expert would receive for reviewing, advising, giving depositions or

testifying in certain kinds of cases, and that relevance to his or her bias as an expert. See e.g., Wood v. Tallahassee Memorial Regional Medical Center, Inc., 593 So. 2d 1140, 1141 (Fla. 1st DCA 1992), rev. denied, 599 So. 2d 1281 (Fla. 1992). As the Wood court wrote with respect to obtaining financial records:

> [W]e agree with the court's conclusion in Dollar General, Inc. v. Glatzer, 590 So. 2d 555, 556 (Fla. 3d DCA 1991), that records of the type sought below by respondents are extremely relevant on the issue of . . . credibility as an expert witness. Id. at 1142.

The First District then aligned itself with the Third and Fourth Districts in holding that the relevance of the information contained in the documents had to be weighed against the burdensomeness of producing those documents.

Allstate as the underinsured carrier and party is qualitatively different from the defendant driver party in the Carrera case. As a party, Allstate is vulnerable to accusations of bias in the hiring of experts. If a group of experts is assured a steady income for its consistently supportive testimony, certainly that bias should be revealed. It is obvious that how much a certain expert earns from one particular party is extremely relevant to the credibility of the retaining party as well as the expert. This Court never disputed that relevance in Elkins. Instead, it found a countervailing interest in protecting necessary witnesses from unnecessary intrusions into their private and financial lives in an effort to minimize the chilling effect of having no medical expert witnesses to testify in personal injury

cases. Here, as the Fourth District found, the situation is much different. The information sought is highly relevant to these witnesses bias toward the party, Allstate. Because Allstate is a party, there can be no chilling effect to deter it from its necessary participation in lawsuits.

D. *Allstate has failed to demonstrate that the information requested would be difficult to ascertain without financial hardship.*

The cornerstone of Allstate's argument to this Court arises from the Fourth District's ruling that a corporation of Allstate's size and stature should be able to provide the information requested in these interrogatories with little, if any, financial or labor hardship. Contrary to its protestations about record evidence from which the court could reach this ruling, Allstate failed to provide the trial court with any sworn testimony regarding the burdensomeness of Plaintiff's requests, despite numerous opportunities to do so. At the hearing, Allstate failed to present any affidavits or testimony to support its contention that the request was burdensome. Instead, Allstate's counsel merely argued:

> Well, your Honor, under - - I think the discovery of this information involves - - is going to involve 1099's on these people from business files, financial information that I don't believe Allstate has readily available. Therefore, it's going to require a burdensome thing to compile this information. Furthermore, its on a national basis, your Honor. Their request is not only for Palm Beach County or South Florida or even Florida. The request is for a national search of this information, which is going to require an enormous amount of time spent to search all

> the Allstate's across the United States to compile this information (A 36-37).

Allstate never produced an affidavit nor attempted to introduce testimony of anyone with personal knowledge about these issues. Further compounding this tactical choice, Allstate also filed an unsworn motion for reconsideration (A 49-52). Although this motion contained argument that Plaintiff's requests were overly burdensome and that such information was not maintained in a statistically-ready, retrievable manner, Allstate failed to accompany this motion with either an affidavit or sworn testimony. Thus, as the Fourth District found in Allstate Insurance Co. v. Boecher, this record does not support that Allstate's burden in providing this information "is any more difficult than the ordinary retrieval of common, routine business records." Id at 108.

When a party objects to discovery on the ground that such discovery is overly broad or burdensome,

> it is incumbent upon [the party] to quantify for the trial court the manner in which such discovery might be overly broad or burdensome. [The party] must be able to show the volume of documents, or the number of man-hours required in their production, or some other quantitative factor that would make it so.

First City Development of Florida, Inc. v. Hallmark of Hollywood Condominium Ass'n, Inc., 545 So. 2d 502, 503 (Fla. 4th DCA 1989). In that case, the Fourth District held that objections of "overly broad" or "burdensome" standing alone do not constitute a basis for granting certiorari relief. Id. Citing that same principle as articulated by the Fourth District, the Fifth District suggested that an affidavit very handily allows a party to quantify for the

trial court the manner in which discovery might be overly broad or burdensome. See Caterpillar Indus., Inc. v. Keskes, 639 So. 2d 1129, 1131 (Fla. 5th DCA 1994) (Court wrote that the Technical Support Manager's unrebutted affidavit clearly outlined the difficulty the company would have in assembling the requested records). Affidavits filed timely in the trial court enable parties to present supporting evidence when burdensomeness in production is claimed. See e.g., Young v. Santos, 611 So. 2d 586, 587 (Fla. 4th DCA 1993).

Here, the Fourth District clearly expressed that the record was devoid of any showing that the production requested by the Plaintiff was overly burdensome on Allstate. Boecher, 705 So. 2d at 108. Almost one year after the initial hearing on its objections, after the issue was fully briefed in the District Court, and after filing its Initial Brief in this Court, Allstate has now moved this court to allow it to file affidavits; a motion which Plaintiff strenuously opposes. Certainly, all of the information contained within those affidavits was available to Allstate at the time it lodged its objections, and failure to include the information at that time bars it from bringing such evidence to this court now. See, Seashole v. F & H of Jacksonville, Inc., 258 So. 2d 316, 317 (Fla. 1st DCA 1972)(Affidavits will not be considered by the district court of appeal where they have not been before the trial court).

Judging from the tone of its Brief, Allstate resents the Fourth District's conclusion that we now live in the age of

computers and "not the bygone error of hooded clerics poring over ancient manuscripts seeking hidden truths." Boecher, 705 So. 2d at 108. The Fourth District's comment that "surely Allstate has the power to pluck the data from its own cyberspace," merely reflects the disingenuousness of an argument to the contrary. Courts have long made decisions reflecting changes in technology. See e.g., Seddon v. Harpster, 403 So. 2d 409, 413-414 (Fla. 1981) (Boyd, J., dissenting) (In an ejectment action interpreting the statute on adverse possession, Justice Boyd recognized fundamental changes in society as well as advances in modern technology and computerized transactions which assist in the accuracy of establishing legal interest); Merritt v. Promo Graphics, Inc., 679 So. 2d 1277, 1279 (Fla. 5th DCA 1996) (Appellate counsel was sanctioned for failing to comply with the rule governing extensions of time, and the court admonished that in the "modern era of technology" there were a feast of communication devices which could have been used to confirm oral communications); Newberry v. State, 421 So. 2d 546, 549 (Fla. 4th DCA 1982) (Where defendant sought to suppress evidence arising out of a search and seizure, the court held it was unreasonable to expect law enforcement officials not to take advantage of modern technology and tools that are in common usage in the ordinary course and performance of their duties.) dismissed, 426 So. 2d 27 (Fla. 1993); Greenberg v. Simms Merchant Police Service, 410 So. 2d 566, 567 (Fla. 1st DCA 1982) (It is not a violation of due process to conduct a telephonic hearing made possible by modern technology to conduct a fair adversary hearing);

Oishi v. State, 400 So. 2d 480, 482 (Fla. 5th DCA) (The court cited a federal opinion where that court opined "modern technology has made it possible to miniaturize to such a degree that enough plastic explosives to blow up an airplane can be concealed in a toothpaste tube . . . ."), rev. denied, 408 So. 2d 1095 (Fla. 1981). Clearly, the law does not require courts to abandon all notions of common sense and fairness when rendering an opinion in our modernized society. Last year, this Court even took judicial notice that DNA methodology conducted properly would satisfy the Frye test, revealing this Court's flexibility with the concepts of modern technology, notwithstanding the lack of every specific instance of technology being proven in the record. See Murray v. State, 692 So. 2d 157, 161 (Fla. 1997).

In addition to its own knowledge of technology, the trial court also had the benefit of reviewing similar objections and arguments brought before a trial court in the state of Arizona. There, in the case of Druz v. State Farm Mutual Automobile Insurance Co., Civil Action No.: CV 95-21280, the Arizona court ordered State Farm Insurance Company to provide virtually the identical information being sought here regarding its use of Biodynamics Corporation. In that case, State Farm was able to provide detailed information reflecting payments by State Farm and any of its subsidiaries to the Biodynamics Research Corporation for certain tax years (PA 1). Somehow, State Farm was in fact able to pull such information out of its "cyberspace." Further, plaintiff's counsel advised the trial court at the hearing that the

tracking came through Biodynamics' Tax I.D. number, a method seemingly easy to duplicate (A 33).

In any event, whether or not Allstate actually has the capability to make this type of finding, it certainly should have the ability to do so, and certainly has the documentation to assemble the information even if it is not already in such a ready form. See Orkin Exterminating Co., Inc. v. Knollwood Properties, Ltd., 23 Fla. L. Weekly D1090, 1091 (Fla. 5th DCA May 1, 1998) (The Fifth District rejected the defendant's objection that its expert did not keep a list of cases in which he testified, and held that the lower court properly ruled that the defendant could comply with the order by providing a list of the cases or by producing billing records or other documents within its control to reveal the identity of those cases). Even in Wood v. Tallahassee Memorial Regional Medical Center, Inc., 593 So. 2d 1140, 1143 (Fla. 1st DCA 1992), rev. denied, 599 So. 2d 1287 (Fla. 1992), where the First District decided a pre-Elkins expert discovery case, the court there too expressed its skepticism of the position that to assemble the requested information would require significant time and money expenditures. There, the court wrote:

> Like the court in Dollar General, supra, we find it 'difficult to believe' that Petitioner's experts would be forced to endure any significant expenditure of time or money in order to compile the documents requested. (For instance, one would expect them to have Federal Income Tax Forms 1099 reflecting income received for the services identified in the order). Moreover, once the documents have been compiled, it will only be necessary to update them for future cases in which they are called upon to produce such information.

These types of records should be easy to produce.

Also of potential interest to this court is a recent Indiana appellate court decision of Brown v. Dobbs, 691 N.E.2d 907 (Ind.App. 1998). The Brown case presents almost the identical factual situation to that at bar. Plaintiff in that case had sought discovery to determine bias between State Farm and Biodynamics. There, the Indiana Appellate Court determined that even though it was not an uninsured/underinsured motorist case where State Farm was the party, State Farm was still the actual party providing the defense. Id. at 909. Based on that reasoning, the Brown court wrote:

> The trial court apparently reasoned that State Farm had access to its own records, and through its relationship with Biodynamics it had access to their records. We cannot say that the trial court abused its discretion in making its determination. Id.

Once again, an appellate court found that the trial court was well within its discretion and common sense to determine that the insurance company was capable of providing such information notwithstanding specific detailed evidence in the record.

Courts need not check their common sense at the judicial door before evaluating cases, nor need they simply accept every disingenuous position advocated by litigants. See e.g. State v. Burns, 698 So. 2d 1282, 1284 (Fla. 5th DCA 1997) (While there is no bright-line rule to determine whether the scope of police conduct was reasonable, our evaluation is guided by 'common sense and ordinary human experience.'"); Toyota Motor Credit Corp. v. Dollar Enterprises, Inc., 702 So. 2d 1319, 1322 (Fla. 3d DCA 1997)

(Schwartz, C.J., dissenting) (In a scathing dissent by Chief Judge Schwartz, he lamented how the majority perceived itself as powerless to consider that the ultimate result would be patently unjust, and cautioned how courts should not be hypnotized by the dictionary meaning of the words expressed in prior cases). In this age of technology, where it has been shown that a comparable corporation can easily provide the information requested "with a push of a button", this court should adopt the Fourth District's opinion denying Allstate's petition for writ of certiorari and Allstate should be forced to produce these documents.

CONCLUSION

This court should uphold the Fourth District's denial of Allstate's petition for writ of certiorari, and should adopt the reasoning as set forth by the Fourth District's opinion in Allstate Insurance Co. v. Boecher, 705 So. 2d 106 (Fla. 4th DCA 1998).

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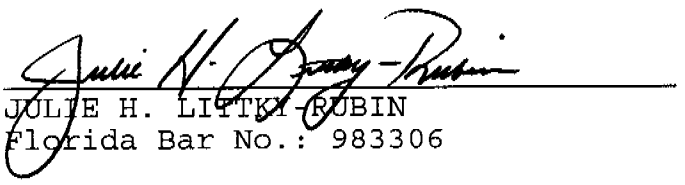

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via facsimile and U.S. Mail this 12th day of June, 1998 to:

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