IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

UNITED SERVICES AUTOMOBILE ASSOCIATION, a Reciprocal Interinsurance Exchange, Petitioner, v. DALE E. JENNINGS, JR., and TAMMY M. JENNINGS, Respondents.	:	CASE NO.: 92,776

AMENDED
BRIEF OF AMICUS CURIAE
FLORIDA DEFENSE LAWYERS' ASSOCIATION

SUPPORTING POSITION OF PETITIONER
UNITED SERVICES AUTOMOBILE ASSOCIATION

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STATEMENT OF THE CASE AND FACTS

Amicus curiae, the Florida Defense Lawyers' Association ("FDLA"), adopts the Statement of the Case and Facts submitted by Petitioner, United Services Automobile Association ("USAA").

QUESTION PRESENTED

WHETHER THE FACT THAT A THIRD PARTY BAD-FAITH CLAIM HAS BEEN BROUGHT PURSUANT TO A *CUNNINGHAM* STIPULATION RATHER THAN AN EXCESS JUDGMENT MAKES ANY DIFFERENCE WHEN ATTORNEY-CLIENT AND WORK PRODUCT PRIVILEGES ARE ASSERTED DURING DISCOVERY IN THE BAD FAITH ACTION AS TO MATERIAL CONTAINED IN THE CLAIMS FILE?

SUMMARY OF THE ARGUMENT

The certified question should be answered in the affirmative. The cases holding that work product and attorney-client privileges do not protect the claims file in third party bad faith cases were decided only in circumstances where there was a judgment already entered against the insured and no further need for such privileges. The cases allowing full discovery in a post-judgment third party claim specifically state that the rationale for refusing to apply the work-product and attorney-client privileges is that upon the entry of the excess judgment, the third party stands in the shoes of the insured, and that the carrier would have no privileges against its insured. This analysis does not apply in a Cunningham case.

The new procedure created by this Court in Cunningham requires a new rule for discovery which will still protect the privileges of the insured and the carrier until such time as the insured is released from liability for the claim.

Furthermore, the decision below places carriers in the untenable position of having to choose between accepting the Cunningham offer, thereby losing its discovery privileges, and rejecting the Cunningham offer, which claimants have argued is itself another act of bad faith. While FDLA certainly finds no support in the law for the premise that rejecting a Cunningham offer is a separate act of bad faith, the argument is being made. Cunningham was designed to conserve judicial resources, not to

change the substantive rights of the parties. The decision below should be quashed.

ARGUMENT

This case presents this Court with the opportunity not only to correct an erroneous analysis by the First District, but also to clarify an area of the law which is in great need of uniformity and clarity. The primary legal question at issue in this case is whether a procedural stipulation designed to conserve judicial resources and minimize the practical impact of a bad faith claim upon the insured amounts to a waiver by the insurance company of its (and its insured's) attorney-client and work product privileges. It is FDLA's position that it should not.

The Duty of Good Faith Generally: Common Law Bad Faith Claims

A basic overview of bad faith law is helpful in analyzing the discovery and privilege issues presented in this case. Bad faith cases can be brought either under the common law or pursuant to statute. The common law duty of good faith first emerged in Auto Mutual Indemnity Co. v. Shaw, 184 So. 852 (Fla. 1938). In Shaw, this Court for the first time recognized an implied covenant of good faith and fair dealing between an insured and its liability insurer in a third-party liability setting. The Shaw case established that an insurance company, in settling claims and conducting a defense on behalf of its insured, has a duty to exercise that degree of care which a person of ordinary care and prudence would exercise in the management of his own business.

In Boston Old Colony Ins. Co. v. Gutierrez, 386 So. 2d 783 (Fla. 1980), cert. denied, 450 U.S. 922, 101 S.Ct. 1372, 67 L.Ed.2d

350 (1981), this Court summarized the insurer's common law duty of good faith as requiring the following:

> This good faith duty obligates the insurer to advise the insured of settlement opportunities, to advise as to the probable outcome of the litigation, to warn of the possibility of an excess judgment,[1/] and to advise the insured of any steps he might take to avoid same. *Ging v. American Liberty Ins. Co.*, 423 F.2d 115 (5th Cir. 1970). The insurer must investigate the facts, give fair consideration to a settlement offer that is not unreasonable under the facts, and settle, if possible, where a reasonably prudent person, faced with the prospect of paying the total recovery, would do so. *Government Employees Ins. Co. v. Grounds*, 311 So. 2d 164 (Fla. 1st DCA 1975), *cert. discharged*, 332 So. 2d 13 (Fla. 1976); *Government Employees Ins. Co. v. Campbell*, 288 So. 2d 513 (Fla. 1st DCA 1973), *quashed*, 306 So. 2d 525 (Fla. 1974); *Baxter v. Royal Indemnity Co.*, 285 So. 2d 652 (Fla. 1st DCA 1973), *cert. discharged*, 317 So. 2d 725 (Fla. 1975).

See also Powell v. Prudential Prop. & Cas. Ins. Co., 584 So. 2d 12, 14 (Fla. 3d DCA 1991) (the duty of good faith includes the duty to advise the insured of settlement opportunities and the probable outcome of a lawsuit and to warn the insured of the possibility of an excess judgment), review denied, 598 So. 2d 77 (Fla. 1992).

The Boston Old Colony court further explained the basis for the duty of good faith as follows:

> An insurer, in handling the defense of claims against its insured, has a duty to use the same degree of care and diligence as a person of ordinary care and prudence should exercise

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[1/] An "excess judgment" is defined as the difference between all available insurance coverage and the amount of the verdict recovered by the injured party. McLeod v. Continental Ins. Co., 591 So. 2d 621 (Fla. 1992).

> in the management of his own business. *Auto Mutual Indemnity Co. v. Shaw*, 134 Fla. 815, 184 So. 852 (1938). For when the insured has surrendered to the insurer all control over the handling of the claim, including all decisions with regard to litigation and settlement, then the insurer must assume a duty to exercise such control and make such decisions in good faith and with due regard for the interests of the insured. *Liberty Mutual Ins. Co. v. Davis*, 412 F.2d 475 (5th Cir. 1969).

See also Florida Farm Bur. Mut. Ins. Co. v. Rice, 393 So. 2d 552 (Fla. 1st DCA 1980) (explaining that because a liability policy gives the insured the right to control the investigation, defense, handling, and settlement of the lawsuit, the liability insurer owes a fiduciary duty to the insured, and that duty requires the exercise of good faith), review denied, 399 So. 2d 1142 (Fla. 1981).

Statutory Bad Faith Claims

In addition to common law bad faith, the Florida Statutes provide several avenues for statutory claims. Florida Statutes section 624.155 specifically provides that any person damaged by certain enumerated acts of an insurer may bring a civil action against that insurer. These enumerated acts include the violation of section 626.9541(1)(i),(o), or (x), prohibiting unfair methods of competition and unfair or deceptive practices or acts; section 626.9551, prohibiting any practice requiring the purchase of insurance as a prerequisite to the lending of money or extension of credit; section 626.9705, prohibiting discrimination in the issuance of life or disability insurance; section 626.9706 and

section 626.9707, prohibiting discrimination with respect to life and disability insurance on the basis of sickle cell trait; and section 627.783, requiring an insurer to return unearned premiums within 30 days of receipt of the cancellation notice.

In addition to the specifically enumerated statutory offenses, section 624.155 allows a civil remedy for bad faith failure to settle, making claims payments without stating the coverage under which payments are made, and failing to promptly settle claims under one portion of an insurance policy in order to influence settlements under other portions of the policy.

Section 624.155 provides certain procedural conditions precedent to bringing an action for these statutory civil remedies.

The legal duty created under section 624.155 is separate from and independent of any contractual obligation. Opperman v. Nationwide Mut. Fire Ins. Co., 515 So. 2d 263, 267 (Fla. 5th DCA 1987). The statutory civil remedy does not preempt any other statutory or common law remedy. Fla. Stat. § 624.155(7). However, it also does not create any new common law remedies. No person may obtain a judgment under both the common law remedy and the statutory remedy. Fla. Stat. § 624.155(7); Dunn v. Nation Security Fire & Cas. Co., 631 So. 2d 1103 (Fla. 5th DCA 1993).[2/]

The Distinction Between First and Third Party Bad Faith

[2/] Section 624.155 has been upheld on constitutional grounds. Jones v. Continental Ins. Co., 670 F.Supp. 937 (S.D. Fla. 1987) (holding that § 624.155 is not unconstitutionally vague or overbroad), subsequent decision, 716 F.Supp. 1456 (S.D. Fla. 1989), question certified, 920 F.2d 847 (11th Cir. 1991), certified question answered, 592 So. 2d 240 (Fla.), vacated, 956 F.2d 1052 (11th Cir. 1992).

A "first party" bad faith action is one in which the insured is also the injured party entitled to receive benefits under the policy. In a "third party" bad faith action, a third party victim is entitled to benefits under the policy as a result of the insured's tortious conduct. McLeod v. Continental Ins. Co., 591 So. 2d 621 (Fla. 1992).

There is no first party action under the common law theory of bad faith. Allstate Ins. Co. v. Douville, 510 So. 2d 1200 (Fla. 2d DCA 1987), review denied, 519 So. 2d 986 (Fla. 1987); Industrial Fire & Casualty Ins. Co. v. Romer, 432 So. 2d 66 (Fla. 4th DCA), review denied, 441 So. 2d 633 (Fla. 1983); Baxter v. Royal Indem. Co., 285 So. 2d 652 (Fla. 1st DCA 1973), cert. discharged, 317 So. 2d 725 (Fla. 1975).[3/] However, a third party claim for common law bad faith may be brought either by the insured or by a third party judgment creditor standing in the insured's shoes. See Travelers Indem. Co. v. Butchikas, 313 So. 2d 101 (Fla. 1st DCA 1975), affirmed, 343 So. 2d 816 (Fla. 1976) (suit by insured for third-party bad faith); Thompson v. Commercial Union Ins. Co. of N.Y., 250 So. 2d 259 (Fla. 1971) (recognizing that a third party judgment creditor can bring the bad faith action). See, e.g., Thomas v. Lumbermens Mut. Cas. Co., 424 So. 2d 36 (Fla. 3d DCA 1982); Cotton

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[3/] The common law does not recognize a first party action because under the common law theory, bad faith liability arises out of a fiduciary relationship between the insured and the insurer. This fiduciary duty exists only in the third party situation. Boston Old Colony v. Gutierrez, 386 So. 2d 783. In the first party situation, the relationship between the insured and the insurer is merely that of creditor/debtor. The parties are actually in an adversarial, rather than fiduciary, relationship.

States Mut. Ins. Co. v. Trevethan, 390 So. 2d 724 (Fla. 5th DCA), review denied, 392 So. 2d 1373 (Fla. 1980); Gutierrez, 386 So. 2d 783; Baxter v. Royal Indem. Co., 285 So. 2d 652 (Fla. 1st DCA 1973), cert. discharged, 317 So. 2d 725 (Fla. 1975); Auto Mut. Indem. v. Shaw, 184 So. 852 (Fla. 1938) (all of which dealt with a judgment creditor-plaintiff's direct bad faith suit against a tortfeasor's liability insurer). The third party judgment creditor's action is derivative of the insured's and is not a separate claim. Fidelity and Cas. Co. of New York v. Cope, 462 So. 2d 459 (Fla. 1985).

One of the most significant differences between the common law action for bad faith and the statutory action under section 624.155(1)(b)1 is that first party actions are permitted under the statute. T.D.S., Inc. v. Shelby Mut. Ins. Co., 760 F.2d 1520 (11th Cir. 1985); United Guaranty Residential Ins. Co. of Iowa v. Alliance Mortgage Co., 644 F.Supp. 339 (M.D. Fla. 1986); Rowland v. Safeco Ins. Co. of America, 634 F.Supp. 613 (M.D. Fla. 1986); Jones v. Continental Ins. Co., 670 F.Supp. 937 (S.D. Fla. 1987); McLeod v. Continental Ins. Co., 591 So. 2d 621 (Fla. 1992); Hollar v. International Bankers Ins. Co., 572 So. 2d 937 (Fla. 3d DCA 1990); Home Ins. Co. v. Owens, 573 So. 2d 343 (Fla. 4th DCA 1990), review denied, 592 So. 2d 680 (Fla. 1991); Vega v. Travelers Indemnity Co., 520 So. 2d 73 (Fla. 3d DCA), review denied, 531 So. 2d 169 (Fla. 1988); Fidelity & Casualty Co. of N.Y. v. Taylor, 525 So. 2d 908 (Fla. 3d DCA 1987), review denied, 528 So. 2d 1181 (Fla. 1988); Opperman v. Nationwide Mut. Fire Ins. Co., 515 So. 2d 263

(Fla. 5th DCA 1987); Kent Ins. Co. v. Hassan, 447 So. 2d 323 (Fla. 4th DCA 1984).

There has been some debate regarding the extent to which a third party beneficiary to the insurance contract has a statutory cause of action for bad faith under section 624.155. This Court held in Conquest v. Auto-Owners Ins. Co., 658 So. 2d 928 (Fla. 1995), that a third party injured by the enumerated statutory violations does have a right of action for unfair claims practices under section 624.155(1)(a). However, in State Farm Fire and Casualty Company v. Zebrowski, 706 So. 2d 275 (Fla. 1997), this Court further held that, absent a judgment in excess of the policy limits, a third party claim cannot be brought for failure to settle under section 624.155(1)(b)1. This Court held that the duty to settle claims in a manner "fairly and honestly toward its insured and with due regard for his interests" ran solely to the benefit of the insured, and that until such time as an excess judgment is obtained by the third party claimant, the interests of the insured and the tort claimant are adverse. In order to preserve the insurer's duty to act in the best interests of its insured, this Court reasoned, the insurer cannot be obligated to the third party who has opposing interests. Of particular significance to the question presented in this case is this Court's emphasis in Zebrowski on the fact that unless and until an excess judgment is obtained, the insurer's duty to the third party claimant must be limited in order to preserve its duty to the insured.

Evidence Admissible or Discoverable in a Bad Faith Case

In analyzing the discoverability of the claims or investigation file in a bad faith case, courts have recognized that there is a distinction between first and third party bad faith. In a first party bad faith case, there is no question that the concepts of attorney/client and work product privilege still apply. See generally Kujawa v. Manhattan National Life Ins. Co., 541 So. 2d 1168 (Fla. 1989); General Accident Ins. Co. v. American Mut. Ins. Co., 562 So. 2d 414 (Fla. 5th DCA 1990). In a first party bad faith case, there is no fiduciary relationship between the parties, and disclosure is therefore not required. See also State Farm Mut. Auto. Ins. Co. v. Jones, 544 So. 2d 1172 (Fla. 5th DCA 1989); Royal Ins. Co. of America v. Zayas Men's Shop, Inc., 551 So. 2d 553 (Fla. 3d DCA 1989); Allstate Ins. Co. v. Melendez, 550 So. 2d 156 (Fla. 5th DCA 1989). See also State Farm Mut. Auto. Ins. Co. v. Kelly, 533 So. 2d 787 (Fla. 4th DCA 1988) (granting certiorari relief to an insurer from production of office files and other documents on the basis of the work product and attorney/client privileges, in a first party bad faith case); State Farm Mut. Auto. Ins. Co. v. LaForet, 591 So. 2d 1143 (Fla. 4th DCA 1992) (holding that an insured in a first party bad faith case had not met its burden of proving need and undue hardship to overcome the work product privilege and therefore could not receive discovery of the insurer's claim file).

In post-judgment third party bad faith actions, in contrast, it is generally held that the plaintiff is entitled to the

insurer's entire claims or litigation file. Continental Cas. Co. v. Aquajet Filter Systems, Inc., 620 So. 2d 1141 (Fla. 3d DCA 1993); Stone v. Travelers Ins. Co., 326 So. 2d 241 (Fla. 3d DCA 1976); Boston Old Colony Ins. Co. v. Gutierrez, 325 So. 2d 416 (Fla. 3d DCA), cert. denied, 336 So. 2d 599 (Fla. 1976). This entitlement has been held to apply regardless of whether the plaintiff in the third party action is the insured or the tort victim/judgment creditor. The courts reason that because the judgment creditor stands in the shoes of the insured, he is therefore entitled both to the insured's counsel's entire litigation file and the insurer's entire claims file.[4/]

Significantly, the Florida courts have recognized that discovery of the claims file in a third party bad faith case may be premature if sought before the issue of the insurer's obligation to provide coverage has been determined. See State Farm Fire Cas. Co. v. Wheeland, 648 So. 2d 297 (Fla. 3d DCA 1995); Superior Ins. Co. v. Holden, 642 So. 2d 1139 (Fla. 4th DCA 1994); Balboa Ins. Co. v. Vanscooter, 526 So. 2d 779 (Fla. 2d DCA 1988).

"Cunningham Agreements"

[4/] The "litigation file" of the insured's counsel for purposes of this discovery runs from the inception of the lawsuit until the date that judgment is entered in the underlying action. Aquajet, 620 So. 2d at 1142; Stone, 326 So. 2d at 243; Gutierrez, 325 So. 2d at 417. See also Dunn v. Nation Security Fire & Cas. Co., 631 So. 2d 1103 (Fla. 5th DCA 1993) (holding that in a third party bad faith case, the insurance company's entire claim file up to the date of judgment in the underlying suit was discoverable).

Florida courts have generally held in both first and third party bad faith actions that the bad faith claim cannot be brought prior to a final determination of the underlying claim. See Blanchard v. State Farm Mut. Auto. Ins. Co., 575 So. 2d 1289 (Fla. 1991) (holding that a first party claim for bad faith accrues when the determination of liability in the underlying action is concluded, and that a first party claim for bad faith therefore cannot be brought before the conclusion of the underlying litigation); Dixie Ins. Co. v. Gaffney, 582 So. 2d 64 (Fla. 1st DCA 1991); State Farm Mut. Auto. Ins. Co. v. Marshall, 618 So. 2d 1377 (Fla. 5th DCA 1993) (both holding that prior to resolution of the underlying claim, a third party bad faith issue could not be decided by declaratory judgment because the question at that point was too attenuated or contingent to be determined).

However, this Court held in Cunningham v. Standard Guaranty Ins. Co., 630 So. 2d 179 (Fla. 1994), that a trial court will be deemed to have jurisdiction to decide an insurer's liability for third party bad faith prior to a final determination of the underlying tort action where the parties stipulate to trying the bad faith case first. The Cunningham court held that the stipulation substituted for the usual requirement of a pre-existing excess judgment. Therefore, in the absence of such a stipulation, an excess judgment is apparently still required.

The Cunningham decision on its face applies only to third party bad faith actions. However, at least one court has held that

the insured and the insurer may stipulate to trying a first party bad faith action before resolution of the underlying claim. See Clough v. GEICO, 636 So. 2d 127 (Fla. 5th DCA 1994). Compare Imhof v. Nationwide Mutual Ins. Co., 643 So. 2d 617 (Fla. 1995) (reaffirming that a complaint for first party bad faith does not state a cause of action unless the insured alleges that the underlying claim has been determined);[5/] Blanchard v. State Farm Mut. Auto. Ins. Co., 575 So. 2d 1289 (Fla. 1991) (noted but not expressly overruled in Cunningham). Thus, this procedure potentially impacts every bad faith case in this state.

[5/] In Imhof, the insured was permitted to amend his complaint to contain this allegation under the limited facts of the case. As Justice Grimes explained in his concurrence, the underlying claim had in fact been resolved by arbitration. The parties were not contesting the issue of whether an allegation was required. However, since the district court of appeal decided the issue on that grounds, this court allowed the insured leave to amend.

The Impact of Cunningham Agreements on Discovery

In the decision below, the First District held that whether a third party bad faith claim proceeds as a result of the third party obtaining an excess judgment or a result of a Cunningham agreement makes no difference in the analysis of the discovery and privilege issues in the bad faith claim. This holding should be quashed because it undermines the very basis for both the existence of the third party bad faith claim and the well-established discovery analysis outlined above. As the First District stated, this is a question of first impression in this state.

The First District offered only one paragraph of analysis in its decision, but that paragraph is significant in that it demonstrates that the court simply applied the traditional discovery analysis and summarily concluded that because this was a third party claim, the insurer had no discovery privileges. 23 Fla. L. Weekly at D584. The cases cited by the First District do hold that discovery is permitted in third party cases. However, these cases were decided prior to Cunningham, at time when an excess judgment was required for a third party claim to even exist. See Dixie Ins. Co. v. Gaffney, 582 So. 2d 64 (Fla. 1st DCA 1991); State Farm Mut. Auto. Ins. Co. v. Marshall, 618 So. 2d 1377 (Fla. 5th DCA 1993). Thus, these cases necessarily assume that an excess judgment has been obtained.

Furthermore, the cases allowing full discovery in a post-judgment third party claim specifically state that the rationale

for refusing to apply the work-product and attorney-client privileges is that upon the entry of the excess judgment, the third party stands in the shoes of the insured, and that the carrier would have no privileges against its insured. See Dunn v. National Security Fire and Casualty, 631 So. 2d 1103, 1109 (Fla. 5th DCA 1993); Continental Cas. Co. v. Aquajet Filter Systems, 620 So. 2d 1141, 1142 (Fla. 3d DCA 1993). This rationale does not apply in cases proceeding under a Cunningham agreement, in which the insured has not been released and has not made an assignment to the third party of all his claims against the carrier.

To confirm that the rationale underlying the cases relied upon by the First District and the Respondents does not apply where there is no excess judgment, this Court need look no further than its own decision last year in the Zebrowski case. In Zebrowski, this Court established that whether an excess judgment has been obtained does make a crucial difference in both statutory and common law third party bad faith cases. This Court recited the various legal and public policy reasons for requiring an excess judgment against the insured prior to certain actions and claims by third party tort claimants. Most importantly, this Court recognized that absent the entry of an excess judgment, the interests of the insured and the third party claimant are not aligned, that no implied assignment of the bad faith claim has

occurred, and that the insurer must abide by the interests of the insured, not those of the third party. [6]

Cunningham does not change any of these principles, and in fact was decided prior to Zebrowski. Cunningham agreements do not contemplate the entry of judgment against the insured.[7] Cunningham agreements do not operate as an assignment of the insured's rights against the carrier to the third party. Most importantly, Cunningham agreements do not release the insured,[8] do not end the insured's participation in the claim, and do not put the claimant in the shoes of the insured. The carrier's obligations to the insured do not end upon execution of a Cunningham agreement. These obligations include the duty and the right to assert proper privileges in discovery.

If given the opportunity, FDLA acknowledges that it would argue strenuously against the logic underlying Cunningham. However, FDLA equally acknowledges that Cunningham is the law of

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[6] It may be that this Court's resolution of the conflict among the DCAs in Zebrowski will reduce the number of statutory cases where the issue presented in this will arise. However, the availability of common law bad faith claims and the applicability of Cunningham in the first party context make the question presented herein an important question for this Court to resolve.

[7] In fact, there does not appear to be any requirement that the amount of damages be agreed upon in order to utilize the Cunningham procedure to determine whether bad faith has occurred.

[8] Obviously, the agreement to release the insured at the end of the case does not change this analysis. It is the unprotected discovery during the case, prior to the release of the insured, that must be avoided.

this state and the issue presented in this case must be addressed in that context. Therefore, FDLA's position in the present appeal assumes that Cunningham will remain a valid procedure. In that regard, this Court must be aware that as a practical matter, the Cunningham decision has created a fertile ground for plaintiffs to attempt to "create" bad faith claims. In Cunningham, the parties not only stipulated to try the bad faith action before the underlying negligence claim, but also stipulated that if no bad faith was found the claims would be settled for the policy limits and the insured would not be exposed to an excess judgment. Cunningham, 630 So. 2d 180. By entering into such a stipulation, the insurance carrier can completely insulate its insured from an excess judgment. If bad faith is found, the carrier will be liable, and if bad faith is not found, the claimant has already agreed to settle for the policy limits.

It is becoming increasingly common for plaintiffs to contend that declining to enter into a Cunningham stipulation is itself bad faith. No court, including the Cunningham court, has addressed whether a rejected Cunningham offer would be admissible in the then-subsequent bad faith action. While it is FDLA's position that rejecting a Cunningham offer is not a separate act of bad faith, this ever more common Plaintiff's strategy must be considered in determining whether an insurer waives work product and attorney client privileges by accepting the offer. The decision of the First District, by refusing to distinguish between excess judgment

bad faith claims and Cunningham bad faith claims, has put the insurers of this state in the untenable position of having to either accept the Cunningham offer and defend the case with no privileges, or to reject the Cunningham offer and be subject to the claim that such rejection was another act of bad faith. This is precisely the sort of "Catch-22" that this Court refused to create in Zebrowski. This Court should adhere to that analysis and quash the decision below.

CONCLUSION

This Court should answer the certified question in the affirmative, quash the decision below, and take the opportunity to clarify this important area of the law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: **THOMAS S. EDWARDS, JR., Esquire**, 1301 Riverplace Boulevard, Suite 1609, Jacksonville, Florida 32207; **ROBERT C. GOBELMAN, Esquire** and **EVAN G. FRAYMAN, Esquire**, Suite 1700, SunTrust Building, 200 West Forsyth Street, Jacksonville, Florida 32202; and **RHONDA B. BOGGESS, Esquire**, Taylor, Day, Currie & Burnett, Barnett Center, 50 North Laura Street, Suite 3500, Jacksonville, Florida 32202 on this the 3rd day of June, 1998.

Hala Sandridge for