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THE SUPREME COURT OF FLORIDA

CASE NO. 12-1257

TRAVELERS COMMERCIAL
INSURANCE COMPANY,

Petitioner, L.T. Case No. 1D11-0015

v.

CRYSTAL MARIE HARRINGTON

Respondent.

ON DISCRETIONARY REVIEW PURSUANT TO FLA. R. APP. P. 9.030(a)(2)(A)(v) OF A DECISION OF THE FIRST DISTRICT COURT OF APPEAL CERTIFYING QUESTIONS OF GREAT PUBLIC IMPORTANCE

SUPPLEMENTAL ANSWER BRIEF OF RESPONDENT, CRYSTAL MARIE HARRINGTON

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CITATIONS TO THE RECORD

The record on appeal will be referred to as (R.Vol. ___ ___). Petitioner, Travelers Commercial Insurance Company will be referred to as "Travelers". Respondent, Crystal Marie Harrington will be referred to as "Respondent" and/or "Crystal Harrington." Travelers' Supplemental Brief will be referred to as (Supp. Brief at __).

STATEMENT OF THE CASE AND FACTS

A. Issue Argued in this Supplemental Answer Brief

Petitioner, Travelers Commercial Insurance Company, filed its Initial Brief in this appeal; however, it failed to raise any issues regarding the award of Respondent, Crystal Marie Harrington's, reasonable appellate fees entered pursuant to the Florida First District Court of Appeal Order dated May 10, 2012 and, therefore, this Court Ordered Travelers to serve a supplemental initial brief addressing whether the award of appellate attorney's fees is final because a motion for review of that award was not timely filed, or whether the award must be quashed if the appeal on the merits is successful because the award is a derivative claim. The Order of the First District Court of Appeal (First DCA) dated May 10, 2012 granted Respondent's motion for reasonable appellate attorneys' fees and the trial court conducted an evidentiary hearing and then awarded Respondent her reasonable appellate fees in a Final Judgment dated August 24, 2012. Travelers did not seek review of that Final Judgment before any tribunal in this State; nor is there any pending review of that Order before this Court. Respondent will demonstrate in this Supplemental Answer Brief that the Final Judgment Awarding Reasonable Appellate Fees is a judgment of the First District Court of Appeal and its term ended following the issuance of its MANDATE to which Travelers did not timely move to *stay*

nor timely seek any appellate review. Further, this Court's Order GRANTING Petitioner's Emergency Motion to Stay Further Proceedings dated February 8, 2013 ("*Stay* Order) with the dissenting comment from Justice Charles T. Canady stating "…would deny the motion to stay as to execution of the appellate attorneys' fees judgment …" simply preserved the status quo pending this resolution that is now ripe for a decision by this Court to lift the *Stay* Order.

B. **Proceedings Relevant to the Supplemental Answer Brief Underlying Claim for Underinsured Motorist Benefits**

The underlying case involves personal injury claims for underinsured motorist ("U/M") benefits arising out of a single-car motor vehicle accident that occurred on October 24, 2009 in which Respondent, now a 22-year-old single disabled female is struggling from blindness in her right eye and residual pain and disability from a broken neck she suffered from the accident. Her mother purchased family automobile insurance coverage through Travelers for three (3) family vehicles that provided $100,000.00 liability coverage, and $100,000.00 U/M coverage now *stacked* to $300,000.00.

The accident was caused by the negligent operation of a family vehicle by a non-family member which occurred while the policy was in effect.

The non-family member driving the vehicle was a permissive user (Wesley

Williams) and he carried automobile insurance coverage of $50,000.00 with Nationwide Insurance Co. and because of the horrendous and disabling injuries to Harrington, Nationwide immediately tendered its $50,000.00 liability limits with the approval of Petitioner.

Respondent also collected $100,000.00 from Petitioner solely on behalf of Rhonda and Leonard Harrington, as the owners of the vehicle, under the liability portion of the policy under the *dangerous instrumentality* doctrine.

The driver's liability insurance limit of $50,000.00 (Nationwide) obviously was not enough to cover the catastrophic injuries suffered by Respondent and, therefore, the driver became the underinsured motorist. Since U/M coverage follows a Class I insured (Harrington, in this case) wherever she goes and once injured by the underinsured motorist (i.e., the Nationwide driver who only had $50,000.00 in liability limits) her U/M coverage is then *stacked* on top of the Nationwide $50,000.00 liability policy to provide additional coverage.

The parties filed opposing summary judgment motions, and following a hearing, the Trial Court entered an Order GRANTING Summary Final Judgment in favor of Respondent for coverage and also judgment for Respondent in the full amount of the *stacked* U/M coverage, i.e., $300,000.00. Subsequently, the Trial Court entered a judgment awarding Respondent trial-court-level attorneys' fees under *Fla.Stat.* §627.428.

C. **Proceedings Before the First DCA**

On appeal from these judgments, the First DCA affirmed the summary judgment as to the U/M coverage and *stacking* issue and certified both issues as being of great public importance solely under the Supreme Court's discretionary jurisdiction under Fla. R. App. P. 9.030(a)(2)(A)(v). The First DCA reversed the judgment for $300,000.00 in U/M benefits based upon Petitioner's argument that it wanted a jury trial to establish issues of fact regarding the amount of Respondent's damages. The First DCA also reversed the judgment for trial-level attorneys' fees solely because the Trial Court placed some limited reliance on the amount of U/M benefits in determining the amount of fees.

D. **Proceedings Regarding the First DCA's Final Judgment Awarding Reasonable Appellate Attorneys' Fees**

In a separate Order, the First DCA GRANTED Respondent her Appellate attorneys' fees and costs for prevailing on appeal and Ordered the Trial Court to conduct a hearing on the amount of Appellate Attorneys' fees and costs. **Petitioner did not seek a *stay* or any other relief from the DCA Order granting Appellate Attorneys' fees.**

The First DCA issued its MANDATE on May 29, 2012 to which Petitioner filed no request to stay the MANDATE and the MANDATE has never been recalled.

Petitioner filed its notice to invoke the discretionary jurisdiction ("Notice") of this Court on or about June 5, 2012 **but again, did not file a Motion to *Stay*, or Motion to Recall the MANDATE and further did not include the separate First DCA Order awarding Appellate Attorneys' fees as a part of its Notice**.

Following directions from the First DCA Order GRANTING appellate attorneys' Fees and MANDATE, on August 24, 2012, the Trial Court conducted an evidentiary hearing, assessing the amount of reasonable appellate attorneys' fees and costs, entering a Final Judgment in the amount of $147,805.00. Petitioner then set a hearing on its Motion to *Stay*.

E. **Specific Facts Regarding the Current Dispute**

The three (3) judge panel of the Florida First District Court of Appeal affirmed the Trial Court on coverage stating in part:

> "Because the Trial Court's ruling on the coverage issue accords with the Supreme Court's pronouncements in Travelers Insurance Company vs Warren, supra, and the ruling on the stacking issue accords with the principles of statutory construction as announced in cases such as Maddox vs State, supra, the summary judgment is affirmed as to those matters." *Harrington v Travelers Insurance Company*, 86 So3d 1274 (Fla. 1st DCA 2012)

On May 10, 2012, the First DCA in Case No. 1D11-0015 also entered its separate Order from its Opinion GRANTING Appellee's (Harrington) Motion for Appellate Attorneys' Fees filed October 17, 2011 and remanding to the Trial Court to assess the amount of Appellate Attorneys' fees. On August 24, 2012, the

Trial Court followed the First DCA MANDATE and rendered its Final Judgment for Appellate Attorneys' Fees and Costs awarding Respondent the sum of $147,805.00, together with interest on the unpaid balance at the statutory rate until paid in full, "all for which, let execution issue".

The Final Judgment was recorded August 29, 2012 in Columbia County Official Records Book 1240 at page 2057.

Petitioner concedes that it never filed a Motion for Review of the Final Judgment with the First DCA under Fla. R. App. P. 9.400(c) or a Notice of Appeal of the Final Judgment under Fla. R. App. P. 9.110. The Final Judgment therefore is not under pending review with any tribunal in this State. Counsel for Petitioner also concedes that its Notice to Invoke Discretionary Jurisdiction to the Florida Supreme Court did not include the First DCA's Order dated May 10, 2012 granting Appellee her reasonable Appellate Attorneys' fees. Therefore, this Court currently lacks jurisdiction to even consider this issue of the enforceability of the Final Judgment GRANTING reasonable appellate attorneys' fees.

On September 26, 2012, Petitioner filed a Supersedeas Bond and deposited Appeal Bond No. 105841080 in the sum of $161,846.47 into the Registry of the Court. The *condition* language in the Appeal bond states:

> "The condition of the above obligation is such that whereas Crystal Marie Harrington has in the Circuit Court, third Judicial Circuit, in and for Columbia County, Florida, in the above entitled cause therein pending recovered a judgment against Defendant, Travelers Commercial Insurance Company, and whereas the above named appellant(s) has, according to law, taken appeal from the said judgment."

Applied here, Petitioner never became an "appellant" from the said Final Judgment because Petitioner never filed a Motion for Review under Fla. R. App. P. 9.400(c) nor a Notice of Appeal under Fla. R. App. P. 9.110 and, therefore, did not "take an appeal from the said Judgment", which again, was conceded by counsel for Petitioner.

The Trial Court entered an Order GRANTING a temporary *Stay* on October 5, 2012, indicating that in the event Petitioner did not file and post a Supersedeas Bond by 5:00 p.m. EST on Wednesday, September 26, 2012, then the Trial Court's Temporary Stay Order was to be lifted and vacated. Further, that in the event Petitioner did file and post a Supersedeas Bond with the Clerk of Court, then the Trial Court's Order granting temporary Stay was also to be lifted and vacated and the automatic *Stay* provision of Rule 9.310(b) of the Florida Rules of Appellate Procedure would govern.

The provisions of Fla. R. App. P. 9.310(b), "Money Judgments, provides that if the Order is a judgment solely for the payment of money, a party may obtain an automatic Stay of execution "pending review", without the necessity of a

Motion or Order, by posting a good and sufficient bond …". (Emphasis supplied). Applied to the undisputed facts in this case, Petitioner never sought "review" of the Final Judgment either by way of "Motion for Review with the Appellate Court" nor by "Notice of Appeal".

The time for filing either a Motion for Review or Notice of Appeal for review has long expired (i.e., thirty days from the date of the Final Judgment [September 24, 2012]) and since there is – "no pending review" of the Trial Court's Final Judgment filed before any tribunal in the State of Florida, then the Automatic *Stay* provision under Fla. R. App. P. 9.310(b)(1) is not applicable. An appellant who fails to perfect his appeal; or who permits it to fail for lack of prosecution, has breached his appeal bond, rendering the surety liable to the appellee. *American Casualty Company of Reading, Penn. v Pan American Bank of Miami*, 156 So2d 27 (Fla. 2d DCA 1963). Since the First DCA Order of May 10, 2012 awarding Respondent reasonable appellate attorneys' fees was not included in the Notice to Invoke Discretionary Jurisdiction with this Court, then this Court has no jurisdiction to even decide this issue.

Once again, on May 29, 2012, the First DCA issued a MANDATE in Case No. 1D11-15 and it is undisputed that Petitioner did not file a Motion to *Stay* the MANDATE within fifteen (15) days. *See*, Fla. R. App. P. 9.340. It is also important for this Court to note that the term for the First DCA panel that decided

the Harrington appeal and Ordered the appellate fees ended.

SUMMARY OF THE ARGUMENT

Petitioner failed to timely file with the First DCA in Case No. 1D11-15 a Motion for Review pursuant to Fla. R. App. P. 9.400(c) to review the Final Judgment entered on August 24, 2012. *Pellar v Granger Asphalt Paving, Inc.,* 687 So2d 282, 284 (Fla 1st DCA 1997) holding that the correct method of seeking review of an Order on Appellate costs or attorneys' fees is to file a motion for review in the Appellate Court in the proceeding that was the subject of the award, within 30 days of rendition of the Order in the Lower Tribunal. *See, also, Browning v New Hope South, Inc.*, 785 So2d 732 (Fla 1st DCA 2001) (dismissing an appeal to review an appellate fee award for failing to follow the Appellate Rules); and *Blackhawk Heating and Plumbing Co. v Data Lease Financial Corp*., 328 So2d 825 (Fla. 1975) (where this Court held that when a MANDATE is reversed by the trial court, such court should have carried out and placed into effect the order and judgment and a trial court is without authority to alter or evade the MANDATE of an Appellate Court). A motion for appellate attorneys' fees is directed to the appellate court and the proprietary of an award of appellate fees is a prerogative of the appellate court. *Computer Task Group, Inc. v Palm Beach County,* 809 So2d 10 (Fla. 4h DCA 2002). Consequently, only the First DCA can change the course of its appellate fee award and unfortunately for Travelers, the

First DCA term ended. Travelers should have preserved its appellate rights by seeking a *stay* of the MANDATE or sought review pursuant to Fla. App. R. 9.400 but elected not to do either.

In preparing for trial, it was discovered from reviewing the trial court docket that Petitioner failed to seek any review whatsoever of the Final Judgment Awarding Reasonable Appellate Attorneys' Fees entered some six (6) months earlier (August 24, 2012). Respondent then filed her "Plaintiff's Emergency Motion for Order Releasing Monies Deposited into the Registry of the Court to apply for Satisfaction of Final Judgment for Reasonable Appellate Attorneys' Fees" arguing that the Trial Court had no jurisdiction to enter a stay of execution of that judgment, and that Fla. R. App. P. 9.310(b) does not apply because Petitioner never sought timely review by the First District of the Appellate Attorneys' Fees Judgment. The Trial Court held a hearing on the motion, and, on January 22, 2013, signed an order GRANTING Respondent's (Plaintiff's) Motion and entered a new Judgment in favor of Respondent for appellate attorneys' fees and costs, in the amount of $150,613.30 which, incidentally, also has not been appealed by Travelers. Although this Court entered its *Stay* Order dated February 8, 2013, this Court has not decided any issue on the merits regarding the collection of the Final Judgment GRANTING reasonable appellate attorneys' fees. In fact, as argued herein, this Court should now vacate the February 8, 2013 *Stay* Order as it relates

to the enforcement and execution of the Final Judgment GRANTING reasonable appellate attorneys' fees dated August 24, 2012, since it was never appealed to this Court through any procedural or appellate rule.

Assuming *arguendo* that Petitioner is correct and that the proper procedure is for Petitioner to seek relief pursuant to Fla. R. Civ. P. 1.540(b)(5) in the event this Court were to reverse both the First DCA and the Trial Court on both the U/M coverage issue and *stacking* issue, then Petitioner would have to follow Fla. R. Civ. P. 1.540(b)(5) and file its motion. In the interim, however, there is no legal basis for the *Stay* Order and execution should proceed as noted by Justice Canady in his dissent.

In short, Petitioner should find itself in the exact same predicament as Lindsey Belshe found herself in in the Ninth Circuit Court of Appeal case cited and heavily relied upon by Travelers: *California Medical Association, et al v Shalala*, 207 F3d, 575 (9h Cir. 2000). The Federal District Court ruled for the Association and GRANTED its Motion for legal fees. Belshe did not appeal the attorneys' fee award but paid the attorneys' fee award. Belshe appealed the District Court's decision on the merits, and the underlying decision on the merits was reversed. Belshe then moved under Fed. R. Civ. P. 60(b)(5) for relief from the fee award and restitution of the fees. Therefore, Travelers should be required to follow the exact same procedures it has relied upon in its Initial Brief and in support of all of

its cases cited on this issue. Travelers should not be able to have it both ways. Hence, again, Justice Canady was correct in the premise of his dissent, and this Court should now re-visit its *Stay* Order.

ARGUMENT

No Procedural, Legal, or Equitable Relief Should be Granted to Stop the Enforcement of the Final Judgment Awarding Reasonable Appellate Attorneys' Fees dated August 24, 2012 and therefore, this Court's *Stay* Order Relating to the Appellate Attorneys' Fees Judgment Should be Vacated

This Court has stated many times that when an insured is compelled to sue to enforce an insurance contract because the insurance company has contested and refused to pay a claim, the insured shall be entitled to recover reasonable attorneys' fees. *State Farm Fire and Casualty Co. v Palma*, 629 So2d 830 (Fla. 1994). Further, because Travelers continues to contest Harrington's claim for the payment of the reasonable appellate attorneys' fees, Harrington is entitled to another recovery for her attorneys' fees against Travelers as a result of the instant proceedings. *Palma, supra*.

For the reasons stated above, in a separate Order GRANTING Appellate Attorneys' fees and costs, the First DCA Ordered the Trial Court to conduct an evidentiary hearing to award Appellate Attorneys' fees and costs. Petitioner concedes the Order granting Appellate Attorneys' fees and costs was not part of the Notice it filed for review with this Court and, therefore, this Court has no

jurisdiction to decide any issue on the merits regarding the enforcement and execution of the Final Judgment Awarding Reasonable Appellate Attorneys' Fees. Second, Petitioner concedes it did not file with the First DCA a Motion to *Stay* the MANDATE with this Court. Petitioner admits it actively participated in the Trial Court hearing awarding fees. Petitioner concedes it was bound by Fla. R. App. P. 9.400(c) to seek Appellate review and further concedes it elected not to seek Appellate review. The law is clear that Petitioner could have preserved its rights against entry and collection of the Final Judgment.

Knowing there is no legal, procedural, or equitable support for a *stay* of a Final Judgment entered six (6) months ago without seeking Appellate review, Petitioner has tried an *end-run* by citing this Court to Fla. R. Civ. P. 1.540, and the following cases: *California Medical Ass'n v. Shalala,* 207 F.3d 575 (9h Cir. 2000); *Flowers v S.Reg'l Physician Servs., Inc.,* 86 F.3d 798 (5h Cir. 2002); *Marty v Bainter*, 727 So.2d 1124 (Fla. 1st DCA 1999); *Mother Goose Nursery Schs., Inc. v Sendak*, 70 F.2d 668 (7th Cir. 1985); *River Bridge Corp. v Am. Somax Ventures*, 76 So.3d 986 (Fla. 4h DCA 2011); *Travelers Commercial Ins. Co. v Harrington*, 86 So.3d 1274 (Fla. 1st DCA 2012); and *Viets v American Recruiters Enter., Inc.*, 922 So.2d 1090 (Fla. 4h DCA 2006).

First and foremost, none of the six (6) cases cited by Travelers are on the subject of reasonable appellate attorneys' fee awards. This is an important

distinguishing factor. An appellate fee award is an award from the appellate Court, not the Trial Court. *Computer, supra.* The Trial Court merely conducts and carries out the ministerial function of conducting an evidentiary hearing to sort out the appropriate hourly rate, number of hours and application of a multiplier, but the proprietary of an award of appellate attorneys' fees is a prerogative of the appellate court. *Computer, supra*. As stated above, review of those Trial Court findings is by Motion back to the appellate court and not a Notice of Appeal. Fla. R. App. P. 9.400. Preserving all appellate issues must be either by Motion to *Stay* the MANDATE (which Travelers admits it elected not to do) or by filing a Motion for Review under Fla. App. R. 9.400 (which Travelers admits it elected not to do). Here, the First DCA's term ended and therefore Travelers failed to preserve any appellate opportunity to have the First DCA decide this issue. Relying upon Fla. R. Civ. P. 1.540(b)(5) might have allowed a procedural vehicle to revisit "trial court awarded fees" – but will not and cannot be a procedural vehicle to revisit "appellate awarded fees" because those fees were awarded by the First DCA that once again ended its term. Travelers had a remedy – but elected not to preserve that remedy. As stated by this Court in *State Farm Mutual Automobile Insurance Company v Judges of the District Court of Appeal, Fourth District*, 405 So2d 980 (Fla. 1981):

> "The reasons for this form the bedrock of Anglo-American jurisprudence: 'there must be an end of litigation. Public policy, as well as the interests of individual litigants, demands it, and the rule just announced is indispensable to such a consummation.'" *State Farm, supra*.

In short, once the term of the First DCA ends, as it did here, and the MANDATE was not *stayed*, then the First DCA Order cannot be revisited with a 1.540(b)(5)-type Motion directed towards its appellate fee award Order.

Travelers, for the first time, acts as if its plan all along was to rely upon Fla. R. Civ. P. 1.540 as a means to seek further review of the Final Judgment Awarding Reasonable Appellate Attorneys' Fees. However, in response, this Court has stated:

> The Florida Supreme Court has said that Rule 1.540 was not intended to serve as a substitute for the new trial mechanism prescribed by Rule 1.530 nor as a substitute for appellate review of judicial error. *Sacco v Slavin*, 64 So2d 955 (Fla.3d DCA 1994).

In either event, Rule 1.540(b)(5) cannot be used here because this issue deals with appellate awarded fees; not trial court fees.

Assuming again *arguendo*, Fla. R. Civ. P. 1.540(b)(5) is similar to Fed. R. Civ. P. 60(b)(5) and that the case of *California Medical Ass'n*. is applicable, then this Court should immediately vacate its *Stay* Order of February 8, 2013 allowing Travelers the opportunity to avail itself to follow those procedures should the "if" occasions ever arise. Since the Final Judgment GRANTING

Reasonable Appellate Attorneys' Fees dated August 24, 2012 was not appealed to any tribunal in this State, then there is no basis for the *Stay* Order. To repeat, Justice Canady got it right; and execution should proceed. In the event there is a reversal of all judgments below, then Travelers can attempt to proceed under Fla. R. Civ. P. 1.540(b)(5), but as stated above, the problem will be – in which venue – the First DCA or the Trial Court? Obviously, it is the First DCA's Order awarding the appellate fees, not the Trial Court, but again those issues will have to be resolved at another time when and "if" the opportunity ever ripens, in another forum. Those issues simply are not ripe for a decision at this time.

Also, this Court should note that in each of the Florida cases cited by Travelers, *Marty*; *River Bridge Corp.*; and *Viets*, the attorneys' fees judgments were appealed and Fla. R. Civ. P. 1.540(b)(5) was simply the procedural vehicle used to argue for the reversal of the attorneys' fees award. Again, applied here, an appeal of the Final Judgment Awarding Reasonable Appellate Attorneys' Fees has never been filed anywhere, before any tribunal.

Travelers' arguments are at best based upon several "**ifs**" – that is, "**if**" this Court were to overturn both the trial court judgment and the First DCA Opinion on all grounds, and then "**if**" Travelers files a 1.540(b)(5) motion; and "**if**" the Court – either the First DCA or trial court, grants the Motion, then under the discretion of that Court, a 1.540(b)(5) may or may not be granted. In short, Travelers relies

heavily upon *California Medical Ass'n., supra*, so let Travelers follow the procedures in that case. This Court should immediately terminate and vacate the *Stay* Order as to the execution of the Final Judgment Awarding Reasonable Appellate Attorneys' Fees and let Travelers then file in the future its 1.540(b)(5) motion **if** all the "**ifs**" come to fruition; otherwise, this Court is opening the door for all those cases where fee awards are entered but no appeal is ever filed. If Travelers' position is accepted, litigants would not have to follow the appellate Rules because in essence, a new judicial rule will be created: sit back, file an appeal on the merits judgment, and do nothing on a follow-up attorneys' fee award judgment.

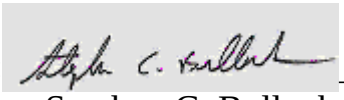
Finally, the case law construing Rule 9.400 confirms that an award of costs after a successful appeal may not be conditioned upon the ultimate outcome of the case. *Centennial Mortgage, Inc. v SG/SL, Ltd*., 864 So2d, 1258 (1st DCA 2004). The prevailing party in an appeal is "entitled to then recover his cost judgment and enjoy an immediate writ of execution." *Di Teodoro v Lazy Dolphin Dev. Co.,* 432 So2d 625, 626 (Fla. 3d DCA 1983). The trial court may not require the party prevailing on the earlier appeal to await the ultimate disposition of the case. *Id*.; see also, *Lucas v Barnett Bank of Lee County*, 732 So2d 405 (Fla. 2d DCA 1999) (holding that prevailing appellants were entitled to an immediate award of appellate costs and reduction of award to judgment capable of execution even

though the action had not yet been finally resolved in the trial court). The rationale for an award of reasonable appellate attorneys' fees under Rule 9.400 should be treated the same as the costs.

CONCLUSION

Based upon the foregoing, Harrington, respectfully requests this Court affirm the First DCA Order Awarding Attorney Fees; the Trial Court's Final Judgment Awarding Reasonable Appellate Attorneys' Fees and immediately lift the *Stay* Order to allow execution of the Final Judgment Awarding Reasonable Appellate Attorneys' Fees dated August 24, 2012.

BRANNON BROWN HALEY & BULLOCK, P.A.

By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _7___ day of May, 2013, I uploaded the foregoing with the Clerk of Court by utilizing the Florida Courts E-Filing Portal and this document will also be served on the following:

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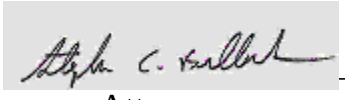
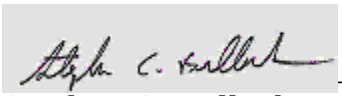


Attorney

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Supplemental Answer Brief complies with the requirements of Fla. R. App. P. 9.210(a)(2).



Stephen C. Bullock