IN THE DISTRICT COURT OF APPEAL
THIRD DISTRICT OF FLORIDA

CASE NO. 3D14-

L.T. CASE NO. 12-38540 CA 15

AMERICAN INTEGRITY
INSURANCE COMPANY
OF FLORIDA,

Petitioner,

v.

NORGE TORRES,

Respondent.

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PETITION FOR CERTIORARI

Petitioner American Integrity Insurance Company of Florida, pursuant to Fla. R. App. 9.030(b)(2)(A) and Fla. R. App. P. 9.100, respectfully files this petition seeking issuance of a writ of certiorari on the grounds set forth below.

BASIS FOR INVOKING JURISDICTION

In this bad faith insurance dispute, Petitioner, American Integrity Insurance Company ("American"), seeks certiorari review of a trial court order compelling American to produce privileged documents and information.[1] If American is

[1] Petitioner has filed with this Petition an Appendix as required by Fla. R. App. P. 9.100(g) and Fla. R. App. P. 9.220. References to the Appendix appear as

required to comply, this would constitute classic "cat out of the bag" irreparable harm in that, once disclosed, American will never be able retrieve its confidential information. *See Allstate Ins. Co. v. Langston*, 655 So. 2d 91 (Fla. 1995):

> Discovery of certain kinds of information may reasonably cause material injury of an irreparable nature. This includes "cat out of the bag" material that could be used to injure another person or party outside the context of the litigation, and material protected by privilege, trade secrets, work product, or involving a confidential informant may cause such injury if disclosed.

655 So. 2d at 94. In this case, the trial court has ordered production of American's claims files, attorney communications and investigative materials. There is no dispute that these materials are protected by the attorney client and work product privileges. *See Scottsdale Ins. Co. v. Camara De Comercio Latino-Americana De Los Estados Unidos, Inc.*, 813 So. 2d 250, 251-52 (Fla. 3d DCA 2002) ("Neither the insured nor the injured third party is entitled to discovery of the claims file ... because the claims file is the insurer's work product."); *Paradise Divers, Inc. v. Upmal*, 943 So. 2d 812, 814 (Fla. 3d DCA 2006) ("The rationale supporting the

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(A __). Unless otherwise indicated, all emphasis in this Petition has been supplied by undersigned counsel.

work product doctrine is that 'one party is not entitled to prepare his case through the investigative work product of his adversary[.]"); Fla. R. Civ. P. 1.280(b)(4).[2]

STATEMENT OF THE FACTS UPON WHICH PETITIONER RELIES

In 2009, American provided a homeowners insurance policy to Respondent Norge Torres ("Respondent") for a house located at 4251 SW 106th Avenue, Miami, Florida. On or about March 15, 2009 the floors of the house allegedly suffered water damage from a plumbing leak. (A 416). After the parties could not agree on the amount of the loss, Respondent filed a breach of contract action in the Circuit Court for Miami Dade County in February, 2010 (the "underlying case"). (A 415-18). American moved to dismiss the complaint on the basis that Respondent had not fulfilled his post-loss obligations under the insurance contract, such that he had not fulfilled conditions precedent to the filing of an action for breach of the contract. (A 47-48, 49, 419-21). Specifically, Respondent's failures included a refusal to sign and swear to the transcript of his examination under oath; a refusal to provide documentation concerning his purchase of the floor tiles in the house; and a refusal to provide documentation concerning his ownership of the

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[2] American is mindful that, under the rule of *State Farm Florida Ins. Co. v. Seville Place Condominium Ass'n, Inc.*, 74 So. 3d 105 (Fla. 3d DCA 2011), certiorari does not lie to review of an order denying a motion to dismiss a bad faith claim. American seeks certiorari review of the trial court's order compelling responses to bad faith discovery. *See Seville Place,* 74 So. 3d at 108-09.

house, all in violation of the terms of the policy of insurance.[3] (A 419-21). *See Edwards v. State Farm Ins. Co.*, 64 So. 3d 730, 732 (Fla. 3d DCA 2011).

Before American's motion to dismiss could be heard, however, on April 5, 2011 American invoked the appraisal clause in the insurance contract by writing to Respondent's counsel and filing a "Motion to Compel Appraisal and to Stay [the

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[3] The insurance policy provides:

SECTION I - CONDITIONS

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2. **Your Duties After Loss** In case of a loss to covered property, you ***must*** see that the following are done:

***

d. Protect the property from further damage. If repairs are required, you ***must***:
  (1) Make reasonable and necessary repairs to the property; and
  (2) Keep an accurate record of repair expenses;

***

f. As often as we reasonably require:
  (1) Show the damaged property;
  (2) Provide us with records and documents we request and permit us to make copies; and
  (3) Submit to an examination under oath, while not in the presence of any other "insured," ***and sign same***;

***

8. **Suit Against Us:** No action can be brought unless the policy provisions have been complied with[.]

(A 126, 127).

action]".[4] (A 422-28). The parties agreed to an order granting that motion. (A 429). The parties went to appraisal as agreed. Following the appraisers' issuance of a damage assessment, American paid that amount, and then paid Respondent's attorney's fees, interest and costs. (A 210). Respondent voluntarily dismissed the breach of contract action on March 12, 2013. (A 430).

As such, American's coverage defenses were never heard by the court below and were never determined adversely to American.

Before dismissing his breach of contract action, Respondent had already filed the instant bad faith action against American in September of 2012. (A 1-66).

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[4] The insurance policy also provides, in Section I Conditions:

6. **Appraisal.** If you and we fail to agree on the amount of the loss, either party may demand an appraisal of the loss. In this event, each party will choose a competent appraiser within twenty days of receiving a written request from the other. The two appraisers will choose an umpire. [***] The appraisers will separately set the amount of the loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of the loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of the loss.

Each party will:

a. Pay its own appraiser; and

b. Bear the other expenses of the appraisal and umpire equally.

(A 127).

Along with that complaint, Respondent filed interrogatories (A 67) and a bad-faith request for production. (A 68-75). Among other items, Respondent sought American's written guidelines for handling property claims, training materials for American's employees involved in the claim, personnel files for those personnel, their notes regarding the claim, the entire claim file in the underlying case, surveillance reports, claims history, investigative reports, sales brochures and other marketing materials for the three year period before the underlying claim, "severity control" documents with respect to "boat owner property claims", American's property claims audits for the three year period preceding the underlying claim, all documents relating to American's "ethical and good faith claims handling" for the three years preceding the underlying claim, copies of all bad-faith lawsuits filed against American for the three years preceding the underlying claim, any documents concerning reward and bonus and incentive programs for American's adjusters for the three years preceding the underlying claim, audits of "closed Florida boat-owners property claims" for the three years preceding the underlying claim, notes of all meetings regarding "boat owner property claims" and good/bad faith claims handling for the three years preceding the underlying claim, seminar materials regarding bad faith litigation/good faith claims handling for the three years preceding the underlying claim, all documents sent to American's employees

and agents "regarding boat owner property claims" for the three years preceding the underlying claim, all property claims files where the insured was accused of fraud or overinflating their claims for the period from January 1, 2009 to December 31, 2011, all of the claims files for American's adjusters involved in Respondent's underlying claim for the period from January 1, 2009 to December 31, 2011, copies of all correspondence between American's adjusters and its attorneys regarding Respondent's underlying claim, and all contracts and tax documents with outside vendors (experts, etc.) involved in the underlying claim.

Respondent then filed an amended complaint in November, 2012 (A. 76-145). He served this, together with an "Amended Request for Production" which sought the same documents minus information about "boat owners property claims," (A 146-53), and an "Amended First Set of Interrogatories," (A 154-59), on American on January 4, 2013. (A 160-61).

On March 5, 2013, American moved to dismiss the amended complaint on the simple basis that Respondent had not accrued an action for bad faith. (A 165-75). Specifically, American's coverage defenses had not been heard in the underlying contract action (which was then still pending), such that it had not been determined that American was liable under the policy, nor had there been a complete determination of Respondent's alleged damages flowing from the alleged breach of

the insurance contract. (A 165-75). It was in response to this argument that Respondent voluntarily dismissed the underlying contract action on March 12, 2013. (A 430). As such, American's coverage defenses and potential exposure in the underlying contract action still have never been determined by a court of law, and apparently they never will.

American also moved for protective order as to Respondent's bad faith discovery on the basis that if Respondent had no cause of action for bad faith, then American's claims files, underwriting files, investigative reports and the like are all protected by the work product and attorney client privileges. (A 225-29). The trial court granted the motion for protective order on March 20, 2013, pending resolution of American's motion to dismiss. (A 238-39).

After agreeing to allow Respondent to file a Second Amended Complaint, (A 249-50) American renewed its motion to dismiss. (A 251-59). The motion was first heard on October 9, 2013 (A 520-40). The result was inconclusive; though the trial court indicated that it was inclined to follows the case of *Trafalger at Green Acres, Ltd. V. Zurich American Ins. Co.*, 100 So. 3d 1155 (Fla 4th DCA 2012) instead of the Fourth Districts prior opinion in *Lime Bay Condominium Inc. v. State Farm Florida Ins. Co.,* 94 So. 3d 698 (Fla. 4th DCA 2012), (A 532-33), it also requested additional memoranda from the parties. (A 538-39).

Hearing resumed on February 14, 2014. (A 543-56). The trial court reasoned that Respondent was relieved from his obligation to obtain a favorable determination on his breach of contract claim because American no longer owed anything on that claim. (A 553). It further quoted the "Beck" case (actually, *Vest v. Travelers Ins. Co.*, 753 So. 2d 1270, 1275 (Fla. 2000)) for the proposition that bad faith claims are predicated "upon the obligation of the insurer to pay when all conditions under the policy would require [it] to pay." (A 553). The trial court then denied American's motion to dismiss, and ordered American to respond to Respondent's bad faith discovery. (A 553-54).

The trial court's order was rendered on March 1, 2014, and this Petition for Certiorari timely follows.

NATURE OF RELIEF SOUGHT

American petitions for a writ of certiorari and requests this Court to quash the March 1, 2014 order of the trial court which compels American to respond to "bad faith" discovery, on the basis that the proponent, Respondent, has not accrued a cause of action for bad faith.

STANDARD OF REVIEW

"For an appellate court to review a nonfinal order by petition for certiorari, the petitioner must demonstrate that the trial court departed from the essential

requirements of law, thereby causing irreparable injury which cannot be adequately remedied on appeal following final judgment." *Seville Place,* 74 So. 3d at 108, quoting *Belair v. Drew,* 770 So. 2d 1164, 1166 (Fla. 2000).

ARGUMENT

As noted above, an insurer's claims files, investigative materials and attorney communications are privileged and generally immune from discovery. However, some of these materials may be discoverable in the context of a *bona fide* claim for bad faith failure to settle an insurance dispute. *See, e.g. State Farm Florida Ins. Co. v. Ramirez,* 86 So. 3d 1198, 1198 (Fla. 3d DCA 2012) ("claims file documents are protected from disclosure in a breach of contract action without a bad faith claim and the issue of coverage not yet resolved"). Thus the question before this honorable Court is whether "the issue of coverage" has been resolved. It has not.

It is axiomatic under Florida law that a bad faith claim does not accrue until there have been determinations of both the insurer's liability under the insurance contract, i.e., breach of the contract, and the extent of the insured's damages flowing from the breach.

> A cause of action for statutory bad faith pursuant to section 624.155(1)(b)1, Florida Statutes (2000), is premature unless there has been a determination of liability and extent of damages owed the insured under the first-party insurance policy. *See Vest.* Hence, a party is not entitled to discovery of an insurer's claim file or documents relating to the insurer's business policies or practices regarding the handling of claims in

> an action for insurance benefits combined with a bad faith action until the insurer's obligation to provide coverage has been established. *See Liberty Mut. Ins. Co. v. Farm, Inc.,* 754 So. 2d 865 (Fla. 3d DCA 2000) (holding that a discovery order in a bad faith action requiring disclosure of the insurer's business practices was premature without a determination of the coverage issue)[.]
>
> Therefore, because Republic's obligation to provide coverage has yet to be determined, the trial court departed from the essential requirements of the law in ordering production of Republic's title claim litigation files and the documents relating to its business policies and practices regarding the handling of claims, leaving Republic with no adequate remedy to review the erroneous order.

Government Employees Ins. Co. v. Rodriguez, 960 So. 2d 794, 795-96 (Fla. 3d DCA 2007). *Accord State Farm Florida Ins. Co. v. Seville Place Condominium Ass'n, Inc.*, 74 So. 3d 105 (Fla. 3d DCA 2011):

> It is well settled that a statutory first-party bad faith action is premature until two conditions have been satisfied: (1) the insurer raises no defense which would defeat coverage (an issue for the judicial process rather than the appraisal process), or any such defense has been adjudicated adversely to the insurer; and, (2) the actual extent of the insured's loss must have been determined. *Vest v. Travelers Ins. Co.*, 753 So. 2d 1270, 1275–76 (Fla. 2000)[.]

74 So. 3d at 108. In this case, neither of those two conditions has occurred.

When Respondent filed his underlying breach of contract lawsuit, American was still investigating his claim. American moved to dismiss on the basis that Respondent had not fulfilled his post-loss obligations to provide information, documents and sworn testimony which would further American's investigation.

This is an absolute defense to liability under Respondent's insurance policy: "At issue in this appeal is whether Edwards complied with two conditions precedent to payment: (1) submission to an examination under oath; and (2) submission of documents that accurately reflect the amount of loss claimed. Failure to comply with a condition precedent to payment relieves the insurer of its duty to make payment." *Edwards v. State Farm Florida Ins. Co.*, 64 So. 3d 730, 732 (Fla 3d DCA 2011).

About one month after moving to dismiss, American invoked the appraisal clause in Respondent's insurance policy. Respondent agreed, and once appraisal was completed American paid the appraisal assessment, Respondent's attorney's fees, costs and prejudgment interest. Nothing was done in the breach of contract case after that until Respondent dismissed the case in March of 2103. Obviously, there was never a determination that American was liable for a breach of the insurance contract (or a determination of the full extent of Respondent's damages). As such there can be no claim for bad faith - and no bad faith discovery. *Rodriguez*, 960 So. 2d at 795-96.

The trial court was persuaded by Respondent's reliance on *Trafalger at Green Acres, Ltd. v. Zurich American Ins. Co.*, 100 So. 3d 1155 (Fla 4th DCA 2012). In that case, a panel of the Fourth District held that there is "no meaningful distinction

between an arbitration award and the appraisal award in this case for the purpose of deciding whether the underlying action was resolved favorably to the insured." *Id.* at 1158. The trial court's reliance upon *Trafalgar* is flawed, for several reasons.

First, as this Court itself has explained, there is huge difference between arbitration and appraisal. *Citizens Prop. Ins. Corp. v. Mango Hill # 6 Condo. Ass'n, Inc.*, 117 So. 3d 1226, 1229 (Fla. 3d DCA 2013). Most significantly, arbitration usually determines both liability and damages, whereas appraisal determines only the amount if the loss. *Id.* The question of the insurer's liability under the insurance contract is a question exclusively for the trial court to determine. *Id.* In the instant case, the question of whether American breached the insurance contract has never been determined by anyone.

Second, *Trafalgar* is readily distinguishable from the instant case. In *Trafalgar*, the insurer had already admitted that the insured's claim was covered by the policy in that it had made $641,730.32 in payments to the insured; the parties dispute was about whether these payments were sufficient to pay for all of the repairs. 100 So. 3d at 1156. The appraisal process determined the amount of the loss. By contrast, in the instant case, American had not admitted liability prior to Respondent's filing of the underlying contract action, but in fact was still investigating Respondent's claim. Respondent was in breach of his post loss

obligations, which is a complete defense to the contract action. *Edwards*, *supra*. American could have, if it chose to, stood its ground and litigated its motion to dismiss the underlying contract action on this basis.

In holding that an appraisal assessment was the same as an arbitration award, the *Trafalgar* panel purportedly followed an arbitration case, *Dadeland Depot, Inc. v. St. Paul Fire and Marine Ins. Co.*, 945 So. 2d 1216 (Fla. 2006). *See Trafalgar*, 100 So. 3d at 1158. However, the appraisal award at issue in *Dadeland Depot* had determined all of the insurer's affirmative defenses adversely to the insurer. 945 So. 2d at 1235-36. Again, there has never been a determination of American's liability in either a court or an arbitration; the appraisal process did not and could not have determined American's liability. *Seville Place*, 74 So. 3d at 108.

Third, it is highly questionable as to whether *Trafalgar* is even good law, in that it contradicts an earlier decision by a different panel of the Fourth District, *Lime Bay Condominium Inc. v. State Farm Florida Ins. Co.*, 94 So. 3d 698 (Fla. 4th DCA 2012).[5] In *Lime Bay*, the insured filed a breach of contract action against the insurer. 94 So. 3d at 699. Two years later, the parties went to appraisal while the breach of contract action was abated, and the insurer paid the resulting

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[5] Only one opinion is known to have followed *Trafalgar*, *Hunt v. State Farm Florida Ins. Co.*, 112 So. 3d 547 (Fla. 2d DCA 2013). However, in *Hunt* there is no indication, as there was in *Trafalgar* and *Dadeland Depot*, of whether the insurer had admitted liability or if it had defenses to assert.

appraisal assessment. *Id.* The insured then filed a bad faith complaint against the insurer. *Id.* The insurer filed a motion to dismiss the bad faith complaint, arguing that there had not yet been a final determination of liability and maintaining that it intended to dispute liability in the breach of contract case. The trial court agreed and dismissed the bad faith complaint. *Id.* In affirming the trial court's dismissal, the Fourth District stated:

> When a plaintiff does not and cannot allege that there has been a final determination of both the insurer's liability and the amount of damages owed by the insurer, the plaintiff's bad faith claim is premature and should be either dismissed without prejudice or abated.
>
> Lime Bay did not, and could not, allege that there had been a final determination of liability since the breach of contract case was still pending.

Id. Thus, unlike the implied holding of *Trafalgar,* the *Lime Bay* panel held that the simple act of paying an appraisal award does not itself constitute a final determination on liability. Under the prior panel rule, the *Trafalgar* holding is bad law. *See In re Rule 9.331, Determination of Causes by a District Court of Appeal En Banc,* 416 So. 2d 1127 (Fla. 1982); *Royal Caribbean Cruises, Ltd. v. Cox*, --- So. 3d ----, 2012 WL 3587008, 37 Fla. L. Weekly D2029 (Fla. 3d DCA August 22, 2012) ("A three-judge panel of this Court, however, cannot "impliedly" recede from or overrule [a prior decision of a three-judge panel]."). Indeed, a subsequent panel of the Fourth District limited *Trafalgar* to its facts. *See State Farm Ins. Co. v.*

Ulrich, 120 So. 3d 217, 219-20 (Fla. 4th DCA 2013) ("This court has held that an appraisal award may constitute a 'favorable resolution' permitting a bad faith claim ***in certain circumstances***.").

Just as in *Lime Bay*, American intended to dispute liability in Respondent's underlying breach of contract case and it would have done so if Respondent had not dismissed that case. The mere fact that American paid the appraisal award does ***not*** constitute a determination that American had breached the insurance contract. *Lime Bay*, 94 So. 3d at 699.

Nor is such payment the equivalent of a confession of judgment.

The purpose of the bad faith statute, Fla. Stat. § 624.155, is to promote the speedy resolution of insurance claims and to prevent unnecessary litigation.

> The law favors settlement of disputes and the avoidance of litigation. *See, e.g., DeWitt v. Miami Transit Co.,* 95 So. 2d 898, 901 (Fla. 1957). The pretrial settlement of a lawsuit is generally favored because it saves scarce judicial resources. *In re Smith,* 926 F.2d 1027, 1029 (11th Cir.1991). Section 624.155 follows longstanding public policy and promotes quick resolution of insurance claims.

Imhof v. Nationwide Mut. Ins. Co., 643 So. 2d 617, 618-19 (Fla. 1994), *receded from on other grounds*, *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995). These are the same goals sought to be achieved by the insurance attorney's fees statute, Fla. Stat. § 627.428. *See generally, State Farm Florida Ins. Co. v. Lorenzo*, 969 So. 2d 393 (Fla. 5th DCA 2007). Likewise, the confession of

judgment doctrine also turns on the policy underlying §§ 624.155 and 627.428: discouraging insurers from contesting valid claims and reimbursing insureds for attorney's fees when they must sue to receive the benefits owed to them. *Lorenzo,* 969 So. 2d at 397; *Pepper's Steel & Alloys, Inc. v. United States,* 850 So. 2d 462, 465 (Fla. 2003).

The confession of judgment doctrine applies where the insurer has denied benefits the insured was entitled to, forcing the insured to file suit, resulting in the insurer's change of heart and payment before judgment. *Lorenzo, Id.; see also, e.g., Ivey v. Allstate Ins. Co.,* 774 So. 2d 679, 684 (Fla. 2000); *Palmer v. Fortune Ins. Co.,* 776 So. 2d 1019, 1021 (Fla. 5th DCA 2001); *United States Security Ins. Co. v. LaPour,* 617 So. 2d 347, 348 (Fla. 3d DCA 1993). Courts generally do ***not*** apply the doctrine where the insureds were not forced to sue to receive benefits; applying the doctrine would encourage unnecessary litigation by rewarding a race to the courthouse for attorney's fees even where the insurer was complying with its obligations under the policy. *Lorenzo,* 969 So. 2d at 398; *Basik Exports & Imports, Inc. v. Preferred Nat'l Ins. Co.,* 911 So. 2d 291, 293 (Fla. 4th DCA 2005).

> Plaintiff ... cite[s] [cases applying the confession of judgment doctrine] for the proposition that the Court [must] ... award fees whenever a Plaintiff sues an insurer and money is later paid. The Court declines to read the statute so broadly.... If Plaintiff were correct, then it would behoove every policyholder to sue whenever a claim is contemplated, because, ... whether the claim is eventually adjusted downward or paid in

> full, attorney's fees would automatically result. This ... would be contrary to the stated purpose of the statute: discouraging lawsuits and encouraging timely payments of claims. If the insurer knows it will eventually have to pay attorney's fees regardless, it loses the incentive to pay the claim timely, and this would raise the likelihood that the claim will be contested. Moreover, there is a fundamental due process concern in finding that an insurance company which appropriately pays a valid claim according to the Policy terms must still pay attorney's fees, because a claimant sued it to do what it was already in the process of doing.... [T]his statute ... ha[s] consistently been interpreted to authorize recovery of attorney's fees from an insurer only when the insurer has wrongfully withheld payment of the proceeds of the policy.

Lorenzo, 969 at 398 (alterations in original), quoting *Tristar Lodging, Inc. v. Arch Speciality Insurance Co.,* 434 F. Supp. 2d 1286, 1297-98 (M.D. Fla. 2006) (citations and footnote omitted).

American's payment of the appraisal award cannot be considered a confession of judgment; *Lorenzo* is on point. In that case, the insured's home suffered fire damage. 969 So. 2d at 395. The insurer made initial payments for the actual cash value of the damage but, as required by the policy, withheld additional payments to fully cover the actual cost of repairs. *Id.* The insured then performed the act necessary to recover the additional payments (entering into a signed repair contract with a general contractor) but, instead of informing the insurer of this, the insured simply filed a breach of contract action. *Id.* at 396. When the insurer finally learned that the insured had entered into a repair contract - after suit had been filed - the insurer paid the additional remaining amounts. *Id.*

The insured then moved for and was granted attorney's fees under the rational that, by making the final payment, the insurer had made a "confession of judgment". *Id.* In reversing the decisions below, the Fourth District stated:

> State Farm was abiding by its obligations under the loss settlement provision, and did not withhold benefits or compel the Lorenzos to sue. The circuit court applied the incorrect law by relying on the confession of judgment doctrine.
>
> We conclude that the circuit court's error resulted in a miscarriage of justice. The order awards attorney's fees to the Lorenzos for bringing a premature suit against State Farm, which was complying with its policy obligations, confounding the role of the attorney's fee in facilitating the economical, efficient, and expeditious administration of justice. Here, as *Tristar Lodging* explains, applying the confession of judgment doctrine undermines the statute's purpose by simultaneously rewarding unnecessary litigation and discouraging insurers' prompt compliance with their obligations.

Id. at 398-99 (citations omitted).

The instant case is directly analogous to *Lorenzo*. American was adjusting and investigating the claim as was its right under the policy when Respondent prematurely filed suit. Respondent could have demanded appraisal as easily as American; instead he "race[d] to the courthouse." At that time it was Respondent himself who was in violation of the policy; American could have denied the entire claim on that basis. *Edwards, supra.* Instead, American promptly invoked the policy's appraisal provision and just as promptly paid the appraisal assessment. American should not be punished for abiding by the policy and participating in its

provisions for alternate dispute resolution. *See Federated Nat. Ins. Co. v. Esposito*, 937 So. 2d 199, 201-202 (Fla 4th DCA 2006) ("We cannot fault the insurer for complying with the terms of its insurance contract by participating in the appraisal process and paying in a timely manner. To do so would dissuade insurers from complying with the terms of their own agreements. [***] To rule otherwise would encourage an insured to run to the courthouse rather than to participate in the alternative dispute resolution outlined by the agreement between the parties. This is contrary to the intent and purpose behind the appraisal process.").

In sum, American had valid defenses to Respondent's breach of contract action which it intended to assert in the breach of contract action. It could not do so because Respondent prematurely dismissed that action. The result is that there has never been a determination that American breached Respondent's insurance contract, which determination is a condition precedent to the maintenance of a bad faith action. *Seville Place Condominium Ass'n, Inc.*, 74 So. 3d at 108. As Respondent does not and cannot have an action for bad faith, he is not entitled to bad faith discovery of American's privileged and confidential materials. *Government Employees Ins. Co. v. Rodriguez*, 960 So. 2d at 795-96. The trial court's order of March 1, 2014 should therefore be quashed.

CONCLUSION

Wherefore, based on the foregoing facts and authorities, American respectfully requests this Court to issue a writ of certiorari which quashes the trial court's order of March 1, 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Petition for Certiorari was sent this 28th day of March, 2014 by U.S. mail to The Honorable Jose M. Rodriguez, Circuit Court Judge, Miami-Dade County Courthouse, 73 West Flagler Street, Miami, Florida 33130; and by electronic mail to:

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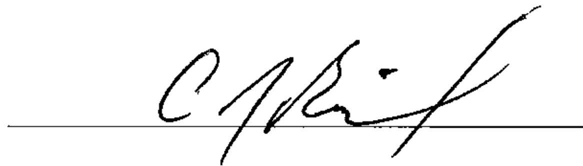
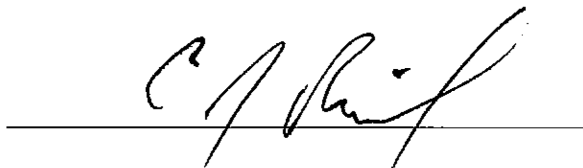


CERTIFICATE OF COMPLIANCE WITH FONT STANDARD

Undersigned counsel hereby respectfully certifies that the foregoing Petition for Certiorari complies with Fla. R. App. P. 9.210 and has been typed in Times New Roman, 14 Point.



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To: Christopher Bailey; e-service
Subject: Pleading Accepted On Case: 14-0685

Your Petition for Certiorari Filed on case 14-0685 has been accepted and is now on the docket.

DCA Case No: 14-0685
Case Name : AMERICAN INTEGRITY INSURANCE CO. OF FL v NORGE TORRES LT Case No : 12-38540