SC87026

IN THE SUPREME COURT OF MISSOURI

Roxanne Kelly,
Relator

vs.

The Honorable Marco A. Roldan, Judge
Circuit Court of Jackson County, Missouri,
Respondent.
Circuit Court No. 0516-CV-02409

BRIEF OF RELATOR

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ATTORNEYS FOR DEFENDANT/RELATOR ROXANNE KELLY

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JURISDICTIONAL STATEMENT

This is a Petition for an original remedial Writ of Prohibition and/or Mandamus, whereby Relator, Roxanne Kelly, petitions this Court to issue a Writ of Prohibition and/or Mandamus preventing the Honorable Marco A. Roldan from proceeding on any of the claims Plaintiff has brought against Relator, Roxanne Kelly, and with directions to sustain Relator's Motion to Dismiss for failure to state a claim for which relief can be granted. The power to issue and determine original remedial writs is within the original jurisdiction of the Missouri Supreme Court, pursuant to Article V, § 4, of the Missouri Constitution.

STATEMENT OF FACTS

On or about January 28, 1998, Plaintiff Shobe was involved in an automobile accident resulting in personal injury to others. At the time of the accident, Plaintiff Shobe was an insured under an Allstate auto policy. The parties injured in Plaintiff Shobe's January 1998 accident filed suit against Plaintiff Shobe. Relator Kelly was the Allstate employee in the Claims Department that handled the claim. Allstate ultimately denied coverage and a defense to Plaintiff Shobe. Judgment was entered against Plaintiff Shobe in the underlying suit for a total amount of $138,839.20. *See* Petition, Exhibit A, paragraphs 7-12.

Plaintiff Shobe has now filed a Petition for Damages for bad faith insurance practices against Allstate Insurance Company and Roxanne Kelly in the Circuit Court of Jackson County, Missouri. Plaintiff Shobe claims that both Defendants failed to exercise good faith in providing coverage to Plaintiff Shobe. *See* Exhibit A.

Upon receipt of the lawsuit, Defendants filed a Notice of Removal of Cause to the United States District Court for the Western District of Missouri. The case was removed, and Defendant subsequently filed a Motion to Dismiss for failure to state a claim and for fraudulent joinder of Defendant Kelly. *See* Defendant's Motion to Dismiss, Exhibit B. Plaintiff responded with a Motion to Remand the case back to State court. *See* Exhibit C. Defendants responded to Plaintiff's Motion to Remand, and Plaintiff filed Reply Suggestions. See Defendant's Response and Plaintiff's Reply, Exhibits D and E. The Western District entered its Order granting Plaintiff's Motion to Remand, without reaching the issue of whether or not Plaintiff had a viable claim against Defendant Kelly. *See* Order from the Western District, Exhibit F.

Once the case was remanded, Defendants filed a Motion to Dismiss for failure to state a claim against Defendant Kelly. *See* Motion to Dismiss, Exhibit G. Plaintiff filed Suggestions in Opposition to Defendant's Motion to Dismiss and Defendant's Reply. *See* Suggestions in Opposition and Reply, Exhibits H and I. Without any explanation, the Honorable Marco A. Roldan overruled Defendant's Motion to Dismiss. *See* Order, Exhibit J.

Defendant filed a Petition for Writ of Prohibition and/or Mandamus and Suggestions in Support in the Missouri Court of Appeals, Western District. Missouri Court of Appeals, Western District, denied Defendant's Petition. *See* Order, Exhibit K.

POINT & AUTHORITIES RELIED ON

RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM PROCEEDING ON ANY CLAIMS PLAINTIFF HAS BROUGHT AGAINST RELATOR, ROXANNE KELLY, AND WITH DIRECTIONS TO SUSTAIN RELATORS MOTION TO DISMISS, BECAUSE RESPONDENT, THE HONORABLE MARCO A. ROLDAN, ACTED IN EXCESS OF THE TRIAL COURT'S JURISDICTION AND DEPRIVED RELATOR OF AN ABSOLUTE DEFENSE, IN THAT RESPONDENT OVERRULED RELATOR'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED, EVEN THOUGH A CLAIM FOR BAD FAITH AGAINST AN INDIVIDUAL ADJUSTER EMPLOYEE DOES NOT EXIST IN THE STATE OF MISSOURI, BECAUSE THE DUTY OF GOOD FAITH DOES NOT RUN FROM AN INDIVIDUAL ADJUSTER EMPLOYEE TO THE INSURED, IT RUNS FROM THE INSURER TO THE INSURED.

ARGUMENT

RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM PROCEEDING ON ANY CLAIMS PLAINTIFF HAS BROUGHT AGAINST RELATOR, ROXANNE KELLY, AND WITH DIRECTIONS TO SUSTAIN RELATORS MOTION TO DISMISS, BECAUSE RESPONDENT, THE HONORABLE MARCO A. ROLDAN, ACTED IN EXCESS OF THE TRIAL COURT'S JURISDICTION AND DEPRIVED RELATOR OF AN ABSOLUTE DEFENSE, IN THAT RESPONDENT OVERRULED RELATOR'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED, EVEN THOUGH A CLAIM FOR BAD FAITH AGAINST AN INDIVIDUAL ADJUSTER EMPLOYEE DOES NOT EXIST IN THE STATE OF MISSOURI, BECAUSE THE DUTY OF GOOD FAITH DOES NOT RUN FROM AN INDIVIDUAL ADJUSTER EMPLOYEE TO THE INSURED, IT RUNS FROM THE INSURER TO THE INSURED.

A. STANDARD OF REVIEW.

The standard as to whether to accept a Petition for Writ of Prohibition and/or Mandamus is discretionary. *State ex rel. Linthicum v. Calvin*, 57 S.W.3d 855, 856-57 (Mo. banc 2001). Prohibition is a discretionary writ that will lie only to prevent "an abuse of judicial discretion, to avoid irreparable harm to a party, or to prevent exercise of extra-jurisdictional power." *Id.* at 857. The general rule is that, if a Court is "entitled to exercise discretion in the matter before it, a Writ of Prohibition cannot prevent or control the manner of its exercise, so

long as the exercise is within the jurisdiction of the Court." *State ex rel Kmart Corp. v. Holliger*, 986 S.W.2d 165, 169 (Mo. banc 1999).

However, the Court should apply a de novo standard when reviewing the Trial Court's denial of Relator's Motion to Dismiss for Failure to State a Claim. *Koger v. Hartford Life Insurance Co.*, 28 S.W.3d 405, 409-410 (Mo.App.W.D. 2000).

B. A WRIT OF PROHIBITION AND/OR MANDAMUS IS THE PROPER REMEDY TO PREVENT THE CIRCUIT COURT FROM PROCEEDING ON THE CLAIMS AGAINST RELATOR KELLY FOR LACK OF JURISDICTION AND TO GRANT RELATOR'S MOTION TO DISMISS.

"Prohibition is the proper remedy to prevent a lower court from acting in excess of its jurisdiction." *State ex rel. McDonnell Douglas Corporation v. Gaertner*, 601 S.W.2d 295 (Mo.App. 1980). "The purpose behind a writ of prohibition is to avoid useless suits, to minimize inconvenience to the parties, and to grant relief at the earliest possible moment in the litigation." *State ex rel. Agri-Trans Corp. v. Nolan*, 756 S.W.2d 203 (Mo.App. 1988). "Prohibition is particularly appropriate when the trial court, in a case where the facts are uncontested, wrongly decides a matter of law thereby depriving a party of an absolute defense." *State ex rel. O'Blennis v. Adolph*, 691 S.W.2d 498 (Mo.App. 1985).

Respondent's denial of Relator's Motion to Dismiss the claims against her is an action that has been properly addressed by Writ of Prohibition in previous Missouri cases, and has resulted in a preliminary order instructing the Respondent Judge to sustain the motion. In

State ex rel. Feldman v. Lasky, 879 S.W.2d 783 (Mo.App.E.D. 1994), the relator, Feldman, had previously filed a motion to dismiss for failure to state a claim upon which relief could be granted and for lack of jurisdiction in the circuit court. Respondent, Judge Lasky, overruled the motion to dismiss, and Feldman subsequently filed a Petition for Writ of Prohibition. Upon issuing a preliminary Writ of Prohibition, the court found that "a writ of prohibition is proper if respondent improperly determined Harmon has a cause of action against Feldman." *Id*. at 785.

Similarly, in *State ex rel. Deutsch v. McShane*, 25 S.W.3d 591 (Mo.App.E.D. 2000), relator sought a Writ of Prohibition challenging respondent, Judge McShane's, refusal to sustain Relators' Motion to Dismiss for failure to state a claim in the underlying suit pending in the Circuit Court of St. Louis County. After finding that by definition the claims against Relators Deutsch and Wolf were not claims upon which relief could be granted, the Court of Appeals issued a Peremptory Writ of Prohibition and directed respondent to sustain the Motion to Dismiss Relators' Deutsch and Wolf as defendants in the underlying action. *Id*. at 593.

In *State ex rel. MFA Ins. Co. v. Murphy*, 606 S.W.2d 661 (Mo. 1980), the Supreme Court made a preliminary Writ of Prohibition absolute, and directed the trial judge to dismiss the underlying action brought by the insured against the insurer, for failure to state a claim. As a condition precedent to bringing an action against the insurer for underinsured motorist benefits, Relator's insurance policy required the insured to join the alleged uninsured tortfeasor as a party Defendant. Plaintiff refused to include the alleged tortfeasor in the

action, and the Court found that the Petition was defective for not alleging a condition precedent. "When a Petition wholly fails to state a cause of action, the defect is jurisdictional." The Court has also issued Writs of Prohibition for pretensive of joinder of an underinsurer, resulting in a failure to state a claim for lack of proper venue, in *State ex rel. Ehrlich v. Hamilton*, 879 S.W. 2d 491 (Mo. 1994); *State ex rel. Shelton v. Mummert*, 879 S.W.2d 525 (Mo. 1994).

The issue addressed in Relator's Petition is properly before this Court by Writ of Prohibition and/or Mandamus. The claims against Relator Kelly do not exist in the state of Missouri, and to allow them to proceed is beyond the jurisdiction of the Court. Relator is not asking the Court to adjudicate the issue, but rather to enforce an existing absolute defense, as a matter of law, that Relator is being deprived of; namely, Plaintiff's failure to state a claim. As more fully set forth below, there currently is no Missouri case law or statutory law available, that permits a bad faith claim against an individual insurance adjuster employee. This fact is not in dispute among the parties. By allowing Plaintiff to proceed on such claims against Relator, the trial court has exceeded its jurisdiction by essentially creating a claim. The purpose behind issuing a Writ of Prohibition and/or Mandamus is "to avoid useless suits, to minimize inconvenience to the parties, and to grant relief at the earliest possible moment in litigation." *State ex rel. Agri-Trans Corp.* at 203. This purpose will certainly be served by properly dismissing Relator from this action, avoiding any further harm or inconvenience to Relator as the discovery process continues and the case is prepared for trial.

C. MISSOURI IMPLIES THE DUTY OF GOOD FAITH IN THE CONTRACT OF INSURANCE.

Plaintiff has filed suit against Defendants Allstate Insurance Company and Relator/Defendant Roxanne Kelly, claiming damages for bad faith. Plaintiff claims that Defendant Allstate Insurance Company failed to defend Plaintiff under a policy of automobile insurance after receiving timely notice of the claim. Defendant/Relator, Roxanne Kelly, was the insurance adjuster employed by Allstate Insurance Company who adjusted Plaintiff's claim. Plaintiff claims that Defendant/Relator Kelly was acting in the course and scope of her employment and is liable for bad faith denial of coverage and failure to defend.

The law of Missouri is well-settled that where the Insurer is contractually obligated to defend anyone who comes within the policy definition of "Insured", a failure to so defend is a breach of contract. *See Crown Center Redevelopment Corporation v. Occidental Fire & Cas. Co. of North Carolina*, 716 S.W.2d 348, 357 (Mo.App. 1986); *Landie v. Century Indm. Co.*, 390 S.W.2d 558, 562 (Mo.App. 1965); 49 A.L.R. 2d 694 1 c. 711. Both Plaintiff and Respondent do not seem to dispute this point of law in Missouri regarding the duty to defend, but instead focus on the claim of bad faith being a tort, rather than a breach of contract.

Relator Kelly suggests that although the claim of bad faith insurance practices may be recognized as a tort that is distinct and different from the duty to defend, the duty of good faith owed is still derived from the contract of insurance. The contract of insurance is the basis for the relationship between the parties, and the duty of good faith is implied from such contract.

Missouri courts have referred to language taken from a well-known treatise on the subject that supports the same theory:

> The general jurisprudence recognizes that a policy of insurance imports that utmost good faith by the insurer to perform according to its terms. **This principle extends to imply covenant of good faith and fair dealing from every contract of insurance.** The law thereby assumes the agreement of the insurer not to injure the right of an insured to receive the benefits of the contract.

Craig v. Iowa Kemper Mut. Ins. Co., 565 S.W.2d 716, 723 (Mo.App., 1978), (citing Couch on Insurance Second, § 23:8 (Supp. p. 8)).

Defendant/Relator Kelly simply was not a party to the contract of insurance between Plaintiff and Defendant Allstate, and that fact has not been disputed by the parties. Defendant/Relator Kelly is merely an employee of Allstate. The duty that is the basis for Plaintiff's claims extends from the contract of insurance, and Defendant/Relator Kelly was not a party to that contract. Without a duty, there can be no tort action for the Plaintiff to assert against Defendant/Relator Kelly. *Truck Ins. Exchange v. Prairie Framing, L.L.C.,* 2005 W.L. 350340 (Mo.App.W.D. 2005). The duty of good faith runs from Defendant Allstate to the insured under the contract, not from the claims adjuster.

D. THE MAJORITY RULE PREVENTS A CLAIM FOR BAD FAITH AGAINST AN INDIVIDUAL ADJUSTER EMPLOYEE.

While it is clear that Missouri has not reached the issue of whether or not a claim for individual liability for bad faith against an insurance adjuster exists, it is equally clear that the majority opinion does not recognize such claims. In fact, the Supreme Court of South Carolina recently looked at the issue and declared that "[t]he majority does not allow this cause of action." *Charleston Dry Cleaners & Laundry, Inc. v. Zurich American Insurance Co.*, 355 S.C. 614, 618, 586 S.E.2d 586, 588 (2003).

The issue before the Court has been recently addressed in the New York Supreme Court case of *Youngs v. Security Mut. Ins. Co.*, 775 N.Y.S.2d 800, 2004 N.Y. Slip Op. 24039 (2004). In *Youngs*, plaintiff alleged a bad faith claim against Security Mutual Insurance Company and Thomas Brace, who was an adjuster for the company. Defendant Brace moved for a dismissal, and the motion was granted. Plaintiff was attempting to draw an analogy between the individual liability of an employee-driver who had negligently caused an accident while driving a vehicle in the scope of his employment, to the individual liability of an insurance adjuster. The court dismissed this theory, stating that:

> Here, the duty was solely through the insured and existed solely because of the contract. The claim based upon bad faith does not state a separate cause of action but arises solely from the contract. (*See, N.Y. Univ. v. Continental Ins. Co.*, 87 N.Y.2d 308, 639 N.Y.S.2d 283, 662 N.E.2d 763 [1995]; *Pavia v. State Farm Mut. Auto. Ins. Co.*, 82 N.Y.2d 445, 605 N.Y.S.2d 208, 626 N.E.2d 24 [1993]). Because there was no contractual

> relationship between Brace and the insured, it follows that the absence of any other independent duty by Brace to the insured precludes an action against Brace individually. The action against him is dismissed.

Id. at 801.

The Seventh Circuit case of *Schwartz v. State Farm Mut. Auto. Ins. Co.*, 174 F.3d 875 (7th Cir. 1999), is particularly on point with the issues of duty and fraudulent joinder that were also raised in this case. In *Schwartz*, the insured brought a state court action against State Farm and State Farm's agent, Robert Comte, alleging that the policy provided illusory coverage and that defendants denied the insurance claim in bad faith. The Court of Appeals determined that removal of the action was proper because the non-diverse insurance agent was fraudulently joined. The court's analysis regarding defendant Comte's individual liability was as follows:

> Plaintiffs allege that Comte denied their insurance claim in bad faith. Although such a denial is recognized as a tort under Indiana law, *see Erie Ins. Co. v. Hickman*, 622 N.E.2d 515 (Ind. 1993), as the District Court noted, it has been applied only to insurance companies, not to their individual employees. *See id.,* at 518. The Schwartzes nonetheless argue that under Indiana's version of respondeat superior, when a tort is committed by an employee, Plaintiffs have the option of suing

either the employer, the individual tort-feasor, or both. *United Farm Bureau Mutual Ins. Co. v. Blossom Chevrolet*, 668 N.E.2d 1289, 1291 (Ind. Ct. App. 1996). Therefore because Comte was the agent who actually denied the Schwartzes' claim, they should be allowed to recover from him as well as his employer if indeed there has been a bad faith denial of their claim.

We are not convinced. The Schwartzes have not cited a single case from any jurisdiction let alone Indiana, which has recognized individual liability bad faith denial of an insurance claim . . . plaintiffs have alleged no facts indicating that Comte himself acted in bad faith beyond complying with the terms of State Farm's allegedly illusory policy. Any liability on Comte's part would therefore be derivative of his employer's. Such a result would turn traditional respondeat superior doctrine on its head. Second, it is unlikely that an Indiana Court would recognize any tort duty that Comte owed to the Schwartzes. Imbedded in plaintiffs' respondeat superior argument, and the case they rely on, is the notion that the individual employee owed an independent duty to the Plaintiffs. But plaintiffs can identify no such duty here. As the Indiana Supreme Court made

> clear when it first recognized the tort of bad faith denial of insurance claims, the duty arises from the 'unique character of the insurance contract' itself. *Erie Ins. v. Hickman*, 622 N.E.2d, 515, 518 (Ind. 1993). A special relationship exists 'between an insurer and an insured because they are in privity of contract.' *Id.* Yet here, both parties admit that, as an individual, Comte is not in privity with the Schwartzes based on their insurance policy. Thus the employee did not owe a special duty to plaintiffs on which the bad faith tort could be based. (Citations omitted).

Any independent duty that Plaintiff is claiming Defendant/Relator Kelly owed to Plaintiff does not exist because the duty of good faith arises from the contract of insurance entered into between the insurance company and the insured. *See, Craig v. Iowa Kemper Mut. Ins. Co.*, 565 S.W.2d 716, 722 (Mo.App. 1978), *citing* Couch on Insurance Second, § 23:8 (Supp. p. 8)). The Defendant/Relator Kelly was not in privity with Plaintiff, based on the insurance policy, and therefore Defendant/Relator Kelly did not owe a special duty to Plaintiff on which the bad faith tort could be based.

There is another point raised by the *Schwartz* opinion that is relevant to arguments made by Plaintiff in this case. Plaintiff's claim against Defendant/Relator Kelly is an attempt to reverse the doctrine of *respondeat superior*. Under Plaintiff's theory, Defendant Kelly's liability would be derivative of her employer, who is actually a party to the contract of

insurance. Such a result would essentially be the complete opposite of the doctrine of *respondeat superior*. A legal duty that extends from the insurance company is not automatically imputed to the employees, so that any liability from a breach of that duty by the employer, extends to the employees as well. There does not appear to be any Missouri authority to support this contention. The Supreme Court of California has also held that an insurer's failure to deal fairly and in good faith may give rise to a cause of action in tort, however, that cause of action does not extend to agents and employees of the insurer. *Gruenberg v. Aetna Ins. Co.*, 9 Cal.3d 566, 510 P.2d 1032, 108 Cal. Rptr. 480 (1973). The court stated that "[o]bviously, the non-insurer defendants were not parties to the agreements for insurance; therefore, they are not, as such, subject to an implied duty of good faith and fair dealing." *Id*., 1039. "As a matter of law, an insurance employee . . . cannot be sued for either breach of contract or breach of the implied covenant of good faith." (*See* e.g., *Liberty Mut. Fire Ins. Co. v. McKenzie*, 88 Cal.App.4th 681, 690, 105 Cal.Rptr.2d 910, 916 (Cal.App. 2001); *Austero v. Nat'l. Cas. Co.*, 62 Cal.App.3d 511, 515, 133 Cal.Rptr. 107 (1976); *Iversen v. Superior Court*, 57 Cal.App.3d 168, 172, 127 Cal.Rptr.49 (1976).

Finally, the Texas Court of Appeals made a similar ruling in *Ebner v. Ohio Cas. Ins. Co.*, 1995 W.L. 611878 (Tex.App.-San Antonio) (not designated for publication). In *Ebner*, plaintiff was contesting a summary judgment granted in favor of the insurance company and the insurance claims adjuster, Ronald Keen. Plaintiff brought a claim against Mr. Keen for negligence, gross negligence, lack of good faith and fair dealing, and violations of the DTPA. With regard to the individual liability of the adjuster, the court held that:

> Adjusters for insurance companies are not liable for bad faith to insureds. Adjusters do not owe a duty to insureds because they are not in contractual privity with them. The duty of good faith and faith dealing applies to insurance carriers; it does not extend to the companies' agents or contractors. (Citations omitted). Keen was merely Iowa Casualty's adjuster and as such he had no duty to the Bank and is not individually liable.

Plaintiff has only been able to cite a single case from Mississippi, *Gallagher Bassett Services, Inc. v. Jeffcoat*, 887 So.2d 777 (Miss. 2004), to support her position. The opinion involves a first-party claim and does not even discuss the duty owed by an individual adjuster employee. The rule cited by Plaintiff from *Gallagher*, states that an "insurance adjuster, agent or other similar ***entity may*** be held independently liable for its work on a claim . . ." *Id*. at 722. By definition, the term "entity" cannot refer to an individual employee. Black's Law Dictionary, 7th Ed. defines "entity" to be: "An organization (such as a business or a governmental unit) that has a legal identity apart from its members."

E. CONCLUSION

Plaintiff has failed to state a claim against Relator Kelly for bad faith because the duty that is the basis for Plaintiff's claim is derived from the contract of insurance, and Relator Kelly was not a party to that contract. Without a duty, there can be no tort action. Relator Kelly does not deny that a bad faith claim can be recognized as a tort action, rather than a breach of contract, and that a duty to defend is different than a duty of good faith. However,

the issue in this case, which is whether the duty of good faith runs from an individual adjuster employee who was not a party to the contract of insurance, is one that must be addressed to avoid any further inconvenience to Relator Kelly or deprivation of an absolute defense.

WHEREFORE, Relator Kelly respectfully prays for this Court to enter it Writ of Prohibition and/or Mandamus, preventing the trial court from proceeding on the claims against Relator Kelly and instructing Respondent to sustain Relator Kelly's Motion to Dismiss for failure to state a claim, and for such other and further relief as the Court deems just, equitable, and proper.

Respectfully submitted,

_____

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CERTIFICATE OF SERVICE

The undersigned, attorney for appellant herein, certifies that the above and foregoing was served in the appropriate quantities to the following parties, as follows:

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The Honorable Marco A. Roldan
Circuit Court of Jackson County, Missouri
JACKSON COUNTY COURTHOUSE
308 West Kansas Avenue
Independence, MO 64050
RESPONDENT JUDGE

Tim Dollar
LAW OFFICES OF TIM DOLLAR, L.C.
1100 Main, Suite 2600
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ATTORNEYS FOR PLAINTIFF/RESPONDENT
Quinlock Shobe

on this ____ day of October, 2005.

_____
Paul Hasty, Jr.
Burke D. Robinson
For the Firm

IN THE SUPREME COURT OF MISSOURI

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Relator,	)	
vs.	)	SC87026
THE HONORABLE MARCO A. ROLDAN,	)	
Respondent.	)	

CERTIFICATION
AS TO WORD COUNT, VIRUS SCAN,
AND THAT DISK IS VIRUS FREE

Pursuant to Rule 84.06(c), Appellant hereby certifies that the word count herein, as calculated by the word count system employed is 3,851 words, and does not exceed the 31,000 word limit provided by the Rule. Additionally, Appellant certifies that the disks submitted to the Court have been scanned for viruses, and are virus free.

WALLACE, SAUNDERS, AUSTIN,
BROWN & ENOCHS, CHARTERED

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APPENDIX TO **BRIEF OF RELATOR**

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APPENDIX

CERTIFICATE OF SERVICE

The undersigned, attorney for appellant herein, certifies that the above and foregoing was served in the appropriate quantities to the following parties, as follows:

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1 copy to:

The Honorable Marco A. Roldan
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RESPONDENT JUDGE

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ATTORNEYS FOR PLAINTIFF/RESPONDENT
Quinlock Shobe

on this ____ day of October, 2005.

_____
Paul Hasty, Jr.
Burke D. Robinson
For the Firm