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STATE OF WASHINGTON
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NO. 864136

SUPREME COURT OF THE
STATE OF WASHINGTON

CLERK

JOHN STAPLES,

Plaintiff/Appellant,

v.

ALLSTATE INSURANCE COMPANY,

Defendant/Respondent.

**RESPONDENT ALLSTATE'S ANSWER TO PETITION FOR
REVIEW**

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I. Introduction

This case arises out of a suspect claim for insurance proceeds that John Staples (hereinafter "Staples") submitted to Allstate Insurance Company (hereinafter "Allstate"). Staples continually refused to cooperate with Allstate's investigation of his claim. He refused to appear for an examination under oath and to provide relevant financial information. Under the longstanding Washington law regarding an insured's duty to cooperate, Staples' failure to cooperate prejudiced Allstate as a matter of law, and precluded recovery.

The Court of Appeals', Division One, Opinion of May 16, 2011, is consistent with the longstanding Washington law regarding an insured's duty to cooperate. The Court of Appeals' Opinion is further consistent with the clear public policy to ferret out insurance fraud. Review of the Court of Appeals' Opinion is therefore unnecessary.

II. Assignments of Error

Allstate does not assign any error to the Court of Appeals' May 16, 2011, Opinion. Rather, Allstate requests that this Court decline review of the Court of Appeals' Opinion. Allstate presents the following counter statement of issues:

1. Should this Court decline review of the Court of

Appeals' Opinion when a) Staples failed to provide Allstate with information and documentation relevant to his claim; and b) Staples failed to appear for an examination under oath?

2. Should this Court decline review of the Court of Appeals' Opinion when a) Staples failed to specify what evidence would be established through additional discovery, and why he failed to obtain such evidence in over three months of litigation; and b) even if Staples had conducted further discovery, it would not change the facts that Staples failed to provide Allstate with requested information and documentation and appear for an examination under oath?

III. Statement of the Case

A. Factual History

1. Staples Submitted a Suspect Insurance Claim to Allstate.

On September 2, 2008, Staples notified Allstate of an alleged theft loss. CP 194-95. Staples told Allstate that on or about August 18, 2008, his personal vehicle, a 1992 Ford Econoline van, was stolen from 15249 Northeast 90th Street, Redmond, Washington 98052. CP 151-52. Allstate initiated a claim under Staples' insurance policy and immediately began its investigation and adjustment. CP 161.

Staples initially told the police that approximately \$15,000.00 worth of work tools and equipment were taken from the personal van. CP 152. The police report reads as follows:

I asked Staples what was inside the vehicle, and he told me that the business that he works for, ESC Corp., does gas scrubbing engineering work. The van was a mobile workshop for the business that Staples contracted with. Contained within the van was a full set up of tools to include: machine tools, tap and dye sets, a grinding wheel, several rollaway chests, waterloo brand tool storage units, work benches and more. Staples told me that it would cost \$15,000 to replace the tools and equipment stored in the van.

Id.

Allstate confirmed the information in the report by contacting the reporting police officer. CP 252. However, approximately two weeks later, on September 18, 2008, Staples told Allstate that the total value of the items taken was between \$20,000.00 and \$25,000.00, \$10,000.00 more than what he told the police. CP 164. Also contrary to what he told the police, Staples implied to Allstate that the stolen tools and equipment were for his personal use. CP 163. On September 18, 2008, he stated as follows:

Q: Do you use these tools for your work?

A: Oh, some of them could be used, but most of them's, uh, a lifetime of-of tools for the last 50 years.

Id.

Allstate's investigation of the loss expanded given Staples' contrary statements regarding the value and nature of the use of the tools

and equipment. CP 165.

2. Staples' Insurance Policy Required Cooperation.

Staples' insurance policy with Allstate at the time of the loss contained the following relevant provisions:

Section I Conditions

...

3. What You Must Do After A Loss

In the event of a loss to any property that may be covered by this policy, **you** must:

...

- d) give **us** all accounting records, bills, invoices and other vouchers, or certified copies, which **we** may reasonably request to examine and permit **us** to make copies.

...

- f) as often as **we** reasonably require:

...

- 2) at **our** request, submit to examination under oath, separately and apart from any other person defined as **you** or **insured person** and sign a transcript of the same.

...

We have no duty to provide coverage under this section if **you**, an **insured person**, or a representative of either fail to comply with items a) through g) above, and this failure to comply is prejudicial to **us**.

...

12. **Action Against Us**

No one may bring an action against **us** in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under a coverage to which Section I Conditions applies, unless:

- a) there has been full compliance with all policy terms; and
- b) the action is commenced within one year after the inception of loss or damage.

CP 146-50.

3. **Staples Failed to Provide Documentation Relevant to Allstate's Investigation.**

On September 17, 2008, Allstate sent a letter to Staples advising him that a claim had been started and requested additional information.

CP 161. Pursuant to the policy, Allstate requested that Staples complete a Loss Itemization Worksheet, which would detail the claimed items. *Id.* Allstate further requested that Staples provide proof of ownership or any documentation relating to the claimed items. *Id.*

On September 29, 2008, Allstate sent a letter to Staples advising him of its continuing investigation. CP 165-66. Pursuant to the policy, Allstate requested that Staples sign a Sworn Statement in Proof of Loss and Authorization. *Id.* Allstate also reiterated its request that Staples provide a detailed list of claimed items and supporting documentation for each item. *Id.*

Staples submitted the Sworn Statement in Proof of Loss over three months after the loss, on or about December 11, 2008. CP 172.

Therein, Staples formally claimed a total of \$25,000.00. *Id.* Staples also submitted the Authorization, signed on December 11, 2008. CP 173. Allstate confirmed receipt of both forms in a letter to Staples, dated December 19, 2008. CP 170.

At the time of Allstate's December 19, 2008, letter, Staples had submitted only an incomplete inventory. CP 171. On January 22, 2009, Staples advised that he was revising the inventory, adding some items and subtracting some items. *Id.* By this time, over four months after the loss, Staples was making a \$25,000.00 claim to Allstate, but had not provided Allstate with all of the requested documentation. *Id.*

4. Staples Failed to Appear for an Examination Under Oath and to Provide Further Relevant Documentation.

On January 15, 2009, Allstate sent a letter to Staples to schedule his examination under oath. CP 205-07. Allstate requested that Staples submit the following before his examination under oath:

- Any estimates, specifications for repairs, appraisals, receipts, invoices, canceled checks, or other documents which substantiate the purchase price or value of any personal property included in the claim;
- All photographs taken or videos taken, either before or after the loss, showing the loss location of any personal property

included in the claim;

- All documents, including contracts, owner's manuals, or warranty information which substantiate or pertain to the acquisition, ownership, or other interest in any personal property included in the claim;
- Your income tax returns for the last four years, evidence of your income for the twelve months prior to the loss, and W-2 forms or other documents substantiating your employment for the last four years;
- All forms, reports, or other documents which you or anyone else submitted to law enforcement personnel or other personnel relating to the loss;
- Any books or records, financial reports, profit and loss statements, financial statements, or other documents which substantiate or pertain to your financial condition for the twelve months prior to the loss;
- A list of all your debts and liabilities in excess of \$500 existing on the date that the loss occurred, showing a) the creditor; b) the date the debt was incurred; c) the original amount of the indebtedness; d) the amount owed at the time of the loss; e) the reason the debt was incurred; and
- All notices of delinquency, writs of execution, notices of garnishment, liens, summons, complaints, threats of litigation, or other documents received from any creditor or other person to whom you owed money in the twelve months prior to the loss.

CP 206.

This information would assist Allstate in making an accurate valuation of Staples' claim. CP 238. The information would assist Allstate in determining whether the claim was fraudulent, and whether the claimed items were for work or personal use.¹ *Id.* The information also

¹ Staples' policy with Allstate contained limitations on the amount of coverage available for business property away from the insured property.

may have supported Staples' claim of ownership to the items and clarified Staples' employment and business history. *Id.*

Staples did not respond to Allstate's January 15, 2009, letter. CP 127. Staples' counsel advised that Staples would not appear for an examination under oath, which Allstate confirmed in a February 4, 2009, letter. CP 129-31. Allstate again requested that Staples provide the above documentation. *Id.*

On March 18, 2009, Allstate wrote to Staples' counsel regarding Staples' failure to cooperate. CP 132-33. Allstate further reiterated its request for documentation. *Id.*

On April 1, 2009, Allstate wrote to Staples' counsel to highlight Staples' failure to cooperate and the consequences thereof. CP 134-37. Allstate again wrote to Staples' counsel on April 13, 2009, to outline the relevancy of the documents requested. CP 138-39. Allstate stated as follows:

Your client's financial records are material to Allstate's investigation. First, as you raised, and the above case law supports, whether your client has a financial motive to file a false claim is material. Second, your client's financial records may support his claim to have ownership of the items allegedly taken in the theft. Third, the financial records will show your client's employment and business history which is also relevant to Allstate's investigation. As such, your client's claim may be closed or denied if he

fails or refuses to provide the financial information requested.

Id.

On April 1, 2009, it had been approximately three months since Allstate had requested that Staples appear for his examination under oath and provide further relevant documents. CP 134-37. Staples failed to do both. *Id.*

5. Allstate Denied Staples' Claim Based on His Failure to Cooperate.

On April 30, 2009, Allstate issued a denial of Staples' claim. CP 157-60. Allstate advised that it was denying Staples' claim because Staples had failed to cooperate with its investigation. *Id.* Rather than cooperate with Allstate's investigation, Staples filed this lawsuit approximately four months later. CP 1-8.

On October 29, 2009, in his responses to Allstate's First Set of Requests for Admission, Staples admitted that he failed to attend an examination under oath prior to filing suit. CP 141. Thus, it is undisputed that Staples failed to comply with Allstate's investigation. *Id.*

B. Procedural History

Staples filed this lawsuit on August 24, 2009. CP 1-8. On September 23, 2009, Allstate filed its Answer and Affirmative Defenses to

Plaintiff's Complaint. CP 9-13. Therein, Allstate asserted that Staples was not entitled to any recovery because he failed to comply with Allstate's investigation of his insurance claim. *Id.*

On November 18, 2009, Allstate moved for summary judgment regarding Staples' failure to comply. CP 14-30. On December 17, 2009, the trial court granted Allstate's Motion for Summary Judgment Regarding Plaintiff's Failure to Comply based on Staples' failure to appear for an examination under oath. CP 255-57. The trial court found that Allstate had requested the examination under oath pursuant to the terms and conditions of the subject policy. *Id.* The trial court dismissed Staples' lawsuit with prejudice. *Id.*

On January 15, 2010, Staples timely filed a Notice of Appeal to the Court of Appeals, Division One. CP 258-60.

C. The Court of Appeals' May 16, 2011, Opinion

On May 16, 2011, the Court of Appeals, Division One, affirmed the trial court's grant of summary judgment and dismissal. Appendix 1, Staples' Petition for Review. Per *Downie v. State Farm Fire & Cas. Co.*, 84 Wn. App. 577, 929 P.2d 484 (1997), the Court of Appeals found that Staples had failed to satisfy a valid condition precedent to filing suit. *Id.* The Court of Appeals highlighted that while Staples argued that he should

not be required to answer the same question multiple times, Staples failed to appear for even one examination under oath. *Id.*

The Court of Appeals found that the trial court did not abuse its discretion when it denied the request for a continuance. *Id.* Staples failed to offer a good reason for his delay in discovery, what evidence would have been established through additional discovery, and how such evidence would have raised an issue of fact. *Id.*

IV. Argument Why Review Should be Declined

Staples moves for Supreme Court review solely based on RAP 13.4(b)(4). Staples argues that his Petition involves issues of substantial public interest that should be determined by the Supreme Court.

However, the Supreme Court has already ruled on the issues in Staples' Petition. In addition, the Courts of Appeal have issued multiple opinions on these issues. The Court of Appeals' Opinion of May 16, 2011, is consistent with these appellate opinions, and does not violate any public policy. Supreme Court review is unnecessary.

A. The Supreme Court, and Courts of Appeal, has Already Determined When an Insured Must Provide Relevant Information and Appear for an Examination Under Oath.

In his Petition, Staples seeks review for a determination regarding when an insured has a duty to provide relevant information and appear for

an examination under oath. However, the Supreme Court and Courts of Appeal have determined these issues.

1. An Insured has a Duty to Provide Relevant and Material Information to His Claim.

Washington Courts have held that once an insurer has reason to broaden its investigation into an insured's possible financial motive, the insured's financial records become relevant and material to the insurer's investigation. *See, e.g., Tran v. State Farm Fire and Cas. Co.*, 136 Wn.2d 214, 226, 961 P.2d 358 (1998); *Pilgrim v. State Farm*, 89 Wn. App. 712, 720-21, 950 P.2d 479 (1997); *Keith v. Allstate Indem. Co.*, 105 Wn. App. 251, 255, 19 P.3d 443 (2001). An insured who refuses to provide relevant and material information to an insurer's investigation is precluded from recovery under the insurance policy. *See, e.g., Tran*, 136 Wn.2d at 226; *Pilgrim*, 89 Wn. App. at 720-21; *Keith*, 105 Wn. App. at 255.

In *Pilgrim*, the court held that “[a]n insured's income and financial condition are undoubtedly relevant to an investigation of whether they filed a fraudulent claim.” *Pilgrim*, 89 Wn. App. at 721. The *Pilgrim* Court further stated that “[t]he relevant inquiry is whether the [insureds] had financial obligations that they were unable to meet.” *Id.*

The court in *Tran* agreed, stating as follows:

. . .the court in *Pilgrim* determined that the insured breached the cooperation clause by refusing to provide its insurer with financial records made relevant by the suspicious nature of the insureds' claim.

Tran, 136 Wn.2d at 230.

The *Tran* Court further stated the following:

Without access to financial documents, State Farm could not evaluate the validity of the [insureds'] claim. It could not decide whether the claim was covered, much less prepare a defense to the inevitable suit by the [insureds'] if it denied coverage. It could not satisfy its statutory duty to ferret out fraud. The [insureds'] refusal to disclose relevant financial information prejudiced State Farm as a matter of law.

Id. at 231.

In *Tran*, the insured submitted a claim to his insurer, State Farm, for an alleged theft at his business. *Id.* at 218. State Farm broadened its investigation into Tran's financial motive based in part on the following: Tran failed to provide any documentation at the onset of his claim; Tran failed to provide supporting documentation for all of his claimed items; State Farm had difficulty arranging a meeting with Tran; and Tran provided the police and State Farm with different stories of when he first discovered the alleged loss. *Id.* at 226-27.

Based on the above, the Supreme Court found that Tran's financial

records became relevant and material to State Farm's consideration of his claim. *Id.* at 227. Tran had a duty to comply with State Farm's requests for financial information. *See Id.* at 231-32. Tran failed to comply with State Farm's requests, and his failure prejudiced State Farm as a matter of law. *Id.* The Supreme Court therefore held that Tran was precluded from recovery. *Id.* at 232-33.

In this case, just as in *Tran*, Staples failed to provide documentation at the onset of his claim, failed to provide supporting documentation for all of this claimed items, and provided different statements regarding the value and classification of his claimed items to the police and Allstate. CP 152, 163-65, 171. Just as in *Tran*, Allstate had reasons to broaden its investigation into Staples' motive, and to request financial information and an examination under oath. *Id.* Allstate's requests for information mirrored the requests in *Keith*. *See* CP 206. Staples failed to comply with Allstate's requests, and his failure prejudiced Allstate as a matter of law. CP 134-37, 141. As the Supreme Court held in *Tran*, Staples is precluded from recovery. The Supreme Court does not need to review this issue again. The Court of Appeal's Opinion of May 16, 2011, is consistent with *Tran*, *Pilgrim*, and *Keith*. Review should be declined.

2. An Insured has a Duty to Appear for an Examination Under Oath.

Staples requests that this Court determine when an insured has a duty to appear for an examination under oath. However, the Court of Appeals determined this issue in *Downie v. State Farm Fire & Cas. Co.*, 84 Wn. App. 577, 929 P.2d 484 (1997). The Supreme Court declined Downie's petition for review, presumably because the reasoning in *Downie* was sound and consistent with its opinions in *Tran* and *Pilgrim*.

In *Downie*, the insured refused to appear for an examination under oath. *Downie*, 84 Wn. App. at 580. Downie's policy stated that no action could be brought against the insurer, State Farm, unless "there has been compliance with the policy provisions. . ." *Id.* When State Farm did not admit or deny liability for his claim, Downie filed suit. *Id.* State Farm moved for summary judgment, arguing that because Downie had refused to appear for an examination under oath, he was precluded from filing suit. *Id.* at 581. State Farm prevailed on summary judgment, and Downie appealed. *Id.*

The Court of Appeals found that Downie failed to appear for an examination under oath, which was a contractual condition precedent to filing suit. *Id.* at 585. Therefore, dismissal of Downie's suit was

proper. *Id.*

Just as in *Downie*, Staples failed to appear for an examination under oath. CP 134-37. Staples admits that he failed to appear for an examination under oath prior to filing suit. CP 141. Under the *Downie* ruling, Staples is precluded from recovery.

In its Opinion of May 16, 2011, the Court of Appeals relied on the sound reasoning of the *Downie* Court. Appendix 1, Staples' Petition for Review. The Court of Appeals rejected Staples' arguments and followed *Downie*. Staples failed to demonstrate why the Court of Appeals should have created new law. *Id.* The Court of Appeals' Opinion of May 16, 2011, was correct; therefore, Supreme Court review is unnecessary.

B. The Court of Appeals' Opinion of May 16, 2011, is Supported by a Clear Public Policy Against Insurance Fraud.

Staples moves for review solely based on RAP 13.4(b)(4).

However, he cannot identify any public policy why the Supreme Court should create new substantive law. The Court of Appeals' Opinion of May 16, 2011, is supported by a clear public policy against insurance fraud. Citing *Pilgrim*, the *Tran* Court recognized the insurer's "statutory duty to ferret out fraud." *Tran*, 136 Wn.2d at 231. The *Tran* Court further stated in this regard:

Significantly, the failure to provide this information hampered State Farm's ability to determine the validity of Trans' claim. The business of insurance companies is, after all, to provide coverage for the legitimate claims of the parties it insures. If insurers are inhibited in their effort to process claims due to the un-co-operativeness of the insured, they suffer prejudice in the ways identified by State Farm and noted by the court in *Pilgrim*. ***If we were to reach any other result, we would be encouraging insureds to not cooperate and to submit fraudulent claims.***

Id (emphasis added).

Washington Courts have consistently required that insureds fully cooperate with an insurer's request for relevant information and to appear for examinations under oath. *See, e.g., Tran*, 136 Wn.2d 214; *Downie*, 84 Wn. App. 577; *Pilgrim*, 89 Wn. App. 712; *Keith*, 105 Wn. App. 251. Washington Courts have required cooperation based on the recognized public policy of diligently investigating insurance claims to fight fraud. *See Id.* The Court of Appeals' Opinion of May 16, 2011, is squarely behind the public policy in *Pilgrim*, *Tran*, *Keith*, and *Downie*. Staples' attempt to create new law is contrary to the longstanding public policy of ferreting out insurance fraud. Staples' Petition should be declined.

C. Staples Mistakes a General Public Interest for a Substantial Public Interest that Requires Supreme Court Determination.

Staples' primary argument for review is that Allstate moved for

publication. However, Staples mischaracterizes Allstate's basis for publication. In its Motion to Publish, Allstate argued that the Court of Appeals' Opinion of May 16, 2011, was of *general public interest* because it enforced, furthered, and clarified the existing law. Appendix 2, Staples' Petition for Review. This does not equate to Staples' argument that his Petition contains issues of *substantial public interest that requires Supreme Court determination*. Staples moves for review for the exact opposite reason that Allstate moved for publication: Staples wishes to overturn the existing law of *Tran, Pilgrim, Keith, and Downie*. As outlined above, Staples has failed to show why the Supreme Court should overturn the existing law and create new law. This Court should decline review.

D. The Issue of a CR 56(f) Continuance is not of Substantial Public Interest that Requires Supreme Court Determination.

Staples seeks review for clarification of when a court should grant a continuance pursuant to CR 56(f). However, the Washington appellate courts have long provided guidance on this issue. There are approximately one hundred Washington appellate opinions in this regard. A court may deny a motion for a continuance when (1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence;

(2) the requesting party does not state what evidence would be established through the additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact. *Pitzer et al. v. Union Bank of Cal.*, 141 Wn.2d 539, 556, 9 P.3d 805 (2000), *citing Tellevik et al. v. Real Prop. et al.*, 120 Wn.2d 68, 90, 838 P.2d 111 (1992). A court reviews a trial court's decision regarding a CR 56(f) motion for abuse of discretion. *Id.*

The trial court properly denied Staples' request for a CR 56(f) continuance because Staples failed to show any of the above elements. Staples failed to specify what evidence would be established through additional discovery, and why he failed to obtain such evidence in over three months of litigation. *See* CP 44-45. Staples offered only a general statement that he wished to obtain responses to written discovery and take Allstate's deposition. *Id.* Even if Staples had conducted further discovery, it would not have raised a genuine issue of material fact regarding Staples' compliance. The facts that Staples failed to provide Allstate with relevant and material information and to appear for an examination under oath would have remained. CP 134-37, 157-60.

The Court of Appeals' Opinion of May 16, 2011, was consistent with the law regarding CR 56(f) continuances. In his Petition, Staples fails to cite any mandatory authority for why the general rule should have

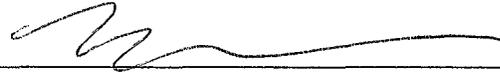
been interpreted differently. Staples further fails to cite any public policy for why the rule should be changed. As a result, Staples' Petition should be declined.

V. Conclusion

This Court should decline review of the Court of Appeals' Opinion of May 16, 2011. Staples fails to show any issue of substantial public interest that merits Supreme Court review. The Supreme Court and Courts of Appeal have already ruled on the issues in Staples' Petition. The Court of Appeals' Opinion of May 16, 2011, is consistent with these prior opinions, and does not violate any public policy.

DATED this 20 day of September, 2011.

COLE, WATHEN, LEID & HALL, P.C.



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Attorneys for Respondent Allstate

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**CERTIFICATE OF SERVICE FOR RESPONDENT ALLSTATE'S
ANSWER TO PETITION FOR REVIEW**

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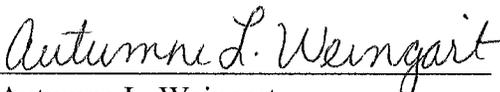
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I certify that on this day I filed the Answer to the Petition for Review and Certificate of Service via legal messenger with the Supreme Court of Washington, and served via legal messenger to the Plaintiff/Appellant's counsel, Daniel R. Fjelstad, at the following address:

Daniel R. Fjelstad
SCOTT, KINNEY, FJELSTAD & MACK
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Seattle, WA 98101

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 21st day of September, 2011, at Seattle, Washington.


Autumne L. Weingart