

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION AND,
IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, 2004

AGRICULTURAL EXCESS AND **
SURPLUS LINES INSURANCE
COMPANY, n/k/a GREAT AMERICAN **
E & S INSURANCE COMPANY,
a foreign corporation, **

Petitioner, **

vs.

** CASE NO. 3D03-1750

KENDALL LAKES TOWNHOMES **
DEVELOPERS, INC., **

LOWER
TRIBUNAL NO. 03-6180

Respondent. **

Opinion filed September 15, 2004.

A Writ of Certiorari to the Circuit Court for Dade County,
Ellen L. Leesfield, Judge.

Heidi M. Roth, for petitioner.

Gonzalo R. Dorta, for respondent.

Before SCHWARTZ, C.J., and LEVY and FLETCHER, JJ.

PER CURIAM.

The Petitioner herein, Agricultural Excess and Surplus Lines Insurance Company, n/k/a Great American E & S Insurance Company ("Agricultural"), seeks a Writ of Certiorari from this Court to quash a non-final order of the circuit court which denied its Motion for Protective Order. The Petitioner is entitled to the relief sought.

The appraisal clause, which is replicated on page ten of the Petition, states that if the appraisers cannot agree on an umpire, "either may request that selection be made by a judge of a court having jurisdiction". Because the parties were not able to agree on an umpire, they went before the trial court pursuant to Agricultural's Petition for Selection of Umpire solely for the purpose of having the trial court select an umpire. At this point, there is no need or justification for a deposition of Agricultural's appraiser, since such a deposition would not be relevant to the trial court's selection of a neutral umpire. The contract between the parties only provides that the parties may approach the court for a selection of an umpire. No discovery is contemplated in the provision of the contract under which the parties are now proceeding.

Petition granted.