

RECEIVED 12/15/2016 11:37 am FLORIDA SUPREME COURT
RECEIVED, 12/14/2016 7:19 PM, Joanne P. Simmons, Fifth District Court of Appeal

**IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FIFTH DISTRICT**

CASE NO: 5D16-393

**GARRISON PROPERTY AND
CASUALTY INSURANCE COMPANY**

Petitioner,

vs.

MICHAEL ROHRBACHER,

Respondent.

_____ /

**NOTICE TO INVOKE DISCRETIONARY JURISDICTION OF FLORIDA
SUPREME COURT**

NOTICE IS HEREBY GIVEN that Michael Rohrbacher, Respondent, pursuant to Rule 9.030(a)(2)(A)(iv) and 9.120(b) and (c), hereby invokes discretionary jurisdiction of the Florida Supreme Court to review the decision of this Court dated November 18, 2016. The decision is within the Supreme Court's jurisdiction in that it expressly and directly conflicts with decisions of other district courts of appeal and of the Florida Supreme Court on the same question of law.

Copies of this Court's November 18, 2016 order are attached hereto as Exhibit "A".

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was filed with the Clerk of the Courts using the Florida Courts E-Filing Portal and that a copy hereof has been furnished to the following recipients via electronic mail: Mr. Douglas Stein, Esquire, Association Law Group, PL, at Doug@algpl.com, Mr. Dean Mitchell, Esquire, dmlaw2@aol.com, and on this 21st day of December, 2015.

s/Chad A. Barr
Chad A. Barr, Esquire
Fla. Bar No.: 55365
Law Office of Chad A. Barr, P.A.
986 Douglas Avenue
Suite 100
Altamonte Springs, Florida 32714
Telephone: (407) 599-9036
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Chad@ChadBarrLaw.com
Paralegal@ChadBarrLaw.com

Exhibit “A”

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

GARRISON PROPERTY AND
CASUALTY INSURANCE COMPANY,

Petitioner,

v.

Case No. 5D16-393

MICHAEL ROHRBACHER,

Respondent.

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Opinion filed November 18, 2016

Petition for Certiorari Review of Decision
from the Circuit Court for Seminole County
Acting in its Appellate Capacity.
Jerri L. Collins, Judge.

Douglas H. Stein, of Bowman and Brooke,
LLP, Coral Gables, for Petitioner.

Dean A. Mitchell, Ocala, for Respondent.

WALLIS, J.

Garrison Property and Casualty Insurance Company ("Garrison") seeks second-tier certiorari review of a decision rendered by the circuit court of Seminole County, Florida, acting in its appellate capacity. We grant review and quash the circuit court's decision in part.¹

¹ We deny review of all issues not discussed in this opinion.

In the underlying case, Michael Rohrbacher, the plaintiff-insured, filed suit against Garrison for its denial of his PIP coverage, resulting in a confession of judgment and a stipulation to Rohrbacher's entitlement to fees and costs. However, the county court denied Rohrbacher's request for a contingent fee multiplier. Rohrbacher then appealed to the circuit court, which reversed the county court's denial and awarded the requested multiplier. Garrison argues the county court correctly found, based on competent, substantial evidence, that the relevant market did not require a multiplier for Rohrbacher to obtain competent counsel because many attorneys took his case without discussion of a multiplier. Thus, Garrison argues, the circuit court departed from the essential requirements of law by reversing the county court's decision and awarding a multiplier. See Custer Med. Ctr. v. United Auto Ins. Co., 62 So. 3d 1086, 1092 (Fla. 2010).

The Florida Supreme Court has provided specific guidelines for a court's multiplier determination:

[T]he trial court should consider the following factors in determining whether a multiplier is necessary: (1) whether the relevant market requires a contingency fee multiplier to obtain competent counsel; (2) whether the attorney was able to mitigate the risk of nonpayment in any way; and (3) whether any of the factors set forth in [Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145 (Fla. 1985)] are applicable, especially, the amount involved, the results obtained, and the type of fee arrangement between the attorney and his client.

Standard Guar. Ins. Co. v. Quanstrom, 555 So. 2d 828, 834 (Fla. 1990) (emphasis added). Garrison's petition focuses primarily on the hearing testimony relevant to the first factor. The county and circuit court both accepted the undisputed fee hearing testimony that Rohrbacher retained approximately ten lawyers to represent him in his PIP case before hiring Rutledge Bradford, who actually won the case. Neither court expressly found

that the prospect of a multiplier was needed to secure competent counsel, or that Bradford even considered the possibility of a multiplier before taking the case. Although a competing expert asserted that he and other attorneys would not have taken the case without a multiplier, competent, substantial evidence otherwise supported the finding that Rohrbacher repeatedly obtained counsel without consideration of a multiplier. Thus, the county court correctly declined to apply a multiplier. See id.

The circuit court correctly stated that Bradford, presented with a difficult case, attained an unlikely success where others had failed. However, the difficulty of the case alone cannot overcome the presumption against a multiplier. See State Farm Fla. Ins. Co. v. Alvarez, 175 So. 3d 352, 358 (Fla. 3d DCA 2015). Furthermore, as we have previously stated, "Our docket, and the dockets of the trial courts in Central Florida, have hundreds, and perhaps thousands, of PIP suits pending at any given time. It seems that few insureds, if any, have difficulty obtaining competent counsel to represent them." Progressive Exp. Ins. Co. v. Schultz, 948 So. 2d 1027, 1031 (Fla. 5th DCA 2007). Because the county court did not abuse its discretion by declining to award a multiplier, the circuit court erred in reversing the county court. See Holiday v. Nationwide Mut. Fire Ins., 864 So. 2d 1215, 1218 (Fla. 5th DCA 2004).

We have previously granted certiorari review for such a departure from controlling case law. Schultz, 948 So. 2d at 1029-31. Thus, we grant the petition and quash the circuit court's ruling in part, reinstating the county court's rulings that Rohrbacher is entitled to neither a fee multiplier nor costs beyond those already stipulated.

PETITION GRANTED.

PALMER and TORPY, JJ., concur.

M A N D A T E

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT

THIS CAUSE HAVING BEEN BROUGHT TO THIS COURT BY APPEAL OR BY PETITION, AND
AFTER DUE CONSIDERATION THE COURT HAVING ISSUED ITS OPINION OR DECISION;

YOU ARE HEREBY COMMANDED THAT FURTHER PROCEEDINGS AS MAY BE REQUIRED
BE HAD IN SAID CAUSE IN ACCORDANCE WITH THE RULING OF THIS COURT AND WITH THE
RULES OF PROCEDURE AND LAWS OF THE STATE OF FLORIDA.

WITNESS THE HONORABLE C. Alan Lawson, CHIEF JUDGE OF THE DISTRICT COURT OF
APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT, AND THE SEAL OF THE SAID COURT AT
DAYTONA BEACH, FLORIDA ON THIS DAY.

DATE: December 07, 2016

FIFTH DCA CASE NO.: 5D 16-0393

CASE STYLE: GARRISON PROPERTY AND v. MICHAEL ROHRBACHER

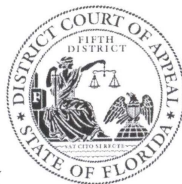
CASUALTY INSURANCE COMPANY

COUNTY OF ORIGIN: Seminole

TRIAL COURT CASE NO.: 10-CC-2026-20P-S, 13-39-AP

I hereby certify that the foregoing is
(a true copy of) the original Court mandate.

Joanne P. Simmons
JOANNE P. SIMMONS, CLERK



cc:

Douglas H. Stein
Clerk Seminole

Rutledge M. Bradford

Dean A. Mitchell

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

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WALLIS, J.

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The Florida Supreme Court has provided specific guidelines for a court's multiplier determination:

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PETITION GRANTED.

PALMER and TORPY, JJ., concur.

5DCA CERTIFICATION

I hereby certify that the foregoing is a true and correct copy of the instrument(s) filed in this office.

Witness my hand and official seal this December 15, 2016.

Joanne P. Simmons, Clerk of the Fifth District Court of Appeal.



By: /s/ Holly Mitts

C. ALAN LAWSON
CHIEF JUDGE

THOMAS D. SAWAYA
WILLIAM D. PALMER
RICHARD B. ORFINGER
VINCENT G. TORPY, JR
KERRY I. EVANDER
JAY P. COHEN
WENDY W. BERGER
F. RAND WALLIS
BRIAN D. LAMBERT
JAMES A. EDWARDS
JUDGES



JOANNE P. SIMMONS
CLERK

CHARLES R. CRAWFORD
MARSHAL

DISTRICT COURT OF APPEAL
FIFTH DISTRICT
300 SOUTH BEACH STREET
DAYTONA BEACH, FLORIDA 32114

December 15, 2016

Hon. John A. Tomasino, Clerk
Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399-1927

Re: GARRISON PROPERTY

v.
ROHRBACHER

Appeal No. 5D16-0393
Trial Court No: 10-CC-2026-20P-S & 13-39-AP
Trial Court Judge: Hon Jessica J. Recksiedier

Dear Hon. Tomasino:

Attached is a certified copy of the Notice invoking the discretionary jurisdiction of the Supreme Court pursuant to Rule 9.120, Florida Rules of Appellate Procedure, along with a copy of this Court's opinion or decision relevant to this case.

- ☐ The filing fee prescribed by Section 25.241(3), Florida Statutes, was received by this court and will be forwarded.
- ☒ The filing fee prescribed by Section 25.241(3), Florida Statutes, was not received by this Court.
- ☐ Petitioner/Appellant has been previously determined insolvent by this Circuit Court or our court.

No filing fee is required because:

- ☐ Summary Appeal (Rule 9.141)
☐ Unemployment Appeals Commission
☐ Habeas Corpus
☐ Juvenile case
☐ Other _____

If there are any questions regarding this matter, please do not hesitate to contact this Office.

Sincerely,

JOANNE P. SIMMONS, CLERK

By: /s/ Holly Mitts
Deputy Clerk

Attachments

cc: Chad Barr Douglas Stein Dean Mitchell