

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC16-2232

MICHAEL ROHRBACHER

Petitioner,

vs.

GARRISON PROPERTY AND
CASUALTY INSURANCE
COMPANY,

Respondent.

**RESPONDENT'S RESPONSE TO PETITIONER'S
MOTION FOR AWARD OF APPELLATE ATTORNEY'S FEES**

Respondent, Garrison Property and Casualty Insurance Company, hereby responds to Petitioner's Motion for Award of Appellate Attorney's Fees ("Mot."), and states as follows:

1. Petitioner asks this Court to "revisit" *State Farm Fire & Casualty Co. v. Palma*, 629 So. 2d 830 (Fla. 5th DCA 2016), thereby undoing 24 years of jurisprudence.

2. Petitioner bases this request on unconfirmed anecdotal conjecture, *i.e.* that the majority of appeals regarding attorney's fees are initiated by insurers with nefarious intent, and on what Petitioner apparently considers to be "equity." (Mot. at ¶ 3).

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3. Petitioner also notes that the holding of *Palma*, that attorney's fees may not be awarded for litigating the amount of attorney's fees, was criticized 17 years ago by a Kansas court. (Mot. at ¶ 4).

4. Lastly, Petitioner argues that the Fifth District Court of Appeal was "bated" into rendering its decision in this case, thereby warranting the imposition of fees as some sort of "penalty." (Mot. at ¶ 5, 6).

5. Petitioner's arguments are beyond specious.

6. One need only read *Palma* to understand that Petitioner's comment that "there is no functional difference between allowing awarding attorney's fees for litigating the issue of entitlement to attorney's fees, and litigating the amount of fees" (Mot. at ¶ 2), is utterly baseless.

7. Petitioner's entitlement to attorney's fees is not determined by anecdotal information, a Kansas court, or amorphous rantings of "equity."

8. Rather, it is dictated by Florida Statute §627.428.¹

¹ Florida Statute §627.428 provides that:

Upon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer, the trial court or, in the event of an appeal in which the insured or beneficiary prevails, the appellate court shall adjudge or decree against the insurer and in favor of the insured or beneficiary a

9. As unequivocally stated by this Court:

[W]e do not agree . . . that attorney's fees may be awarded for litigating the *amount* of attorney's fees. The language of the statute does not support such a conclusion. Such work inures solely to the attorney's benefit and cannot be considered services rendered in procuring full payment of the judgment.

* * *

Our conclusion that statutory fees may be awarded for litigating the issue of the entitlement to attorney's fees but not the amount of attorney's fees comports with the purpose of section 627.428 and with the plain language of the statute.

Palma, 629 So. 2d at 833 (italics in original).

10. This Court further noted that a request such as that which Petitioner makes here, is not one properly made to a court, but should be addressed with the legislature:

If the scope of section 627.428 is to be expanded to include fees for time spent litigating the amount of attorney's fees, **then the Legislature, rather than this Court, is the proper party to do so.**

Palma, 629 So. 2d at 833 (emphasis added).

reasonable sum as fees or compensation for the insured's or beneficiary's attorney prosecuting the suit in which recovery is had.

Fla. Stat. §627.428(1).

11. Petitioner's request for this Court to "revisit" *Palma* and create an entitlement to attorney's fees for time spent litigating over the amount of attorney's fees, is essentially a request for this Court to re-write Florida Statute §627.428.

12. That request should be outright rejected and Petitioner's Motion for Award of Appellate Attorney's Fees should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-mail transmission this 18th day of December, 2017 to: Chad A. Barr, 986 Douglas Avenue, Suite 100, Altamonte Springs, Florida 32714 Esq., service@chadbarrlaw.com, chad@chadbarrlaw.com, paralegal@chadbarrlaw.com.

By: /s/ Douglas H. Stein
Douglas H. Stein