

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC18-320

AMERICAN SOUTHERN HOME
INSURANCE COMPANY,

L.T. Case Number: 5D17-326

Petitioner,

vs.

LOUIS PHILIP LENTINI, ETC.,

Respondent.

/

**PETITIONER AMERICAN SOUTHERN HOME
INSURANCE COMPANY'S RESPONSE IN OPPOSITION TO
APPELLANT'S MOTION FOR APPELLATE ATTORNEY'S FEES**

Petitioner American Southern Home Insurance Company ("American Southern") pursuant to Florida Rules of Appellate Procedure 9.300(a) and 9.400(b), responds to Respondent Louis Philip Lentini, as personal representative of the Estate of Michael E. Lentini, Jr.'s ("Lentini") motion for appellate attorney's fees.

1. Lentini requests a fee award under section 627.428, Florida Statutes, which requires "the rendition of a judgment or decree" in his favor and against American Southern. Thus, Lentini must prevail in this appeal and must ultimately obtain a judgment in his favor under the policy to be entitled to fees. *See*

Professional Med. Group, Inc. v. United Auto. Ins. Co., 967 So. 2d 243, 244 (Fla. 3d DCA 2007) (recognizing an appellate fee award must be conditioned upon the insured's ultimately prevailing under the policy).

2. At issue here is a final summary judgment in favor of American Southern. The Fifth District reversed the trial court's summary judgment order, and certified conflict with *Martin v. St. Paul Fire & Insurance Co.*, 670 So. 2d 997, 998 (Fla. 2d DCA 1996). If American Southern prevails in this Court, American Southern will be the prevailing party and Lentini will not be entitled to fees. And if Lentini prevails in this appeal, he is only entitled to fees if, upon remand, he obtains a judgment in his favor. *See Professional Med. Group, Inc.*, 967 So. 2d at 244.

3. Thus, Lentini is entitled to no more than a contingent fee award that is conditioned upon him ultimately prevailing with a recovery on the policy.

WHEREFORE, American Southern Home Insurance Company respectfully requests that this Court deny Lentini's motion for appellate attorney's fees. However, if Lentini prevails in this appeal, American Southern requests that this Court enter an order that awards appellate fees contingent upon Lentini obtaining a final judgment in his favor.

Submitted on April 17, 2018:

By: /s/ Raoul G. Cantero
Raoul G. Cantero

HINSHAW & CULBERTSON LLP

Andrew E. Grigsby
Florida Bar No. 328383
2525 Ponce de Leon Blvd., 4th Floor
Coral Gables, Florida 33134
Telephone: (305) 358-7747
Facsimile: (305) 577-1063
E-mail: mpearcy@hinshawlaw.com
E-mail: agrigsby@hinshawlaw.com
E-mail: pvarela@hinshawlaw.com

WHITE & CASE LLP

200 S. Biscayne Blvd., Suite 4900
Miami, Florida 33131-2352
Telephone: (305) 371-2700
Facsimile: (305) 358-5744
Raoul G. Cantero
Florida Bar No. 552356
E-mail: rcantero@whitecase.com
David P. Draigh
Florida Bar No. 625268
E-mail: ddraigh@whitecase.com
Zachary B. Dickens
Florida Bar. No. 98935
E-mail: zdickens@whitecase.com

Counsel for Petitioner

CERTIFICATE OF SERVICE

I CERTIFY that this brief was filed with the Clerk of Court and served electronically via the Florida Courts E-Portal System to the following parties on this 17th day of April 2018:

The Carlyle Appellate Law Firm

John N. Bogdanoff, Esq.
Shannon McLin Carlyle, Esq.
121 S. Orange Ave., Suite 1500
Orlando, FL 32801
Telephone: (407) 377-6870
Facsimile: (352) 259-8842
E-mail: served@appellatelawfirm.com
E-mail: jbogdanoff@appellatelawfirm.com
E-mail: scarlyle@appellatelawfirm.com
E-mail: sullivan@appellatelawfirm.com

Clark & Martino, P.A.

Anthony T. Martino, Esq.
3407 West Kennedy Blvd.
Tampa, Florida 33609
Telephone: (813) 879-0700
Facsimile: (813) 879-5498
E-mail: amartino@clarkmartino.com

Counsel for Respondent

By: /s/ Raoul G. Cantero
Raoul G. Cantero