

## *Carlton Fields Newsflash*

### ***Attorney's Fees pursuant to Florida Statute § 627.428 and the Confession of Judgment Doctrine***

In State Farm Fla. Ins. Co. v. Lorenzo, No. 5DP6-3147, 2007 WL 2140588 (Fla. 3d DCA July 27, 2007), the Fifth District Court of Appeal quashed an attorney's fees award in favor of the insured, Lorenzo, holding that Lorenzo was not entitled to attorney's fees under the confession of judgment doctrine and section 627.428, Florida Statutes. Although State Farm paid the claim *after suit was filed*, it abided by its obligations under the policy and did not withhold benefits or compel the insured to sue.

After a fire damaged Lorenzo's home, Lorenzo filed a claim with State Farm. The parties thereafter inspected the property and agreed that the amount of damage was \$99,167.82. State Farm paid Lorenzo the actual cash value of the loss (\$93,167.82) pursuant to the policy's loss settlement provision, and advised Lorenzo that the remaining amount of approximately \$6,000 for replacement costs would be paid when the repairs were completed or when Lorenzo presented a signed contract with a general contractor. Lorenzo obtained a signed contract with a general contractor but did not submit the contract to State Farm and instead filed suit. Upon receipt of the suit and learning of the signed repair contract, State Farm paid Lorenzo the remaining \$6,000 pursuant to the policy provision. The trial court nevertheless awarded Lorenzo attorney's fees, relying on the confession of judgment doctrine.

On appeal, the Fifth District held this doctrine only "applies where the insurer has denied benefits the insured was entitled to, forcing the insured to file suit, resulting in the insurer's change of heart and payment before judgment." Since Lorenzo concealed the fact that she performed the condition precedent entitling her to the remaining \$6,000 under her policy, State Farm did not withhold benefits or compel Lorenzo to sue. Accordingly, Lorenzo was not entitled to attorney's fees.



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