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PREFACE

The parties will be referred to as State Farm and the respondent. The following symbol will be used:

(A ) - State Farm's Appendix.

STATEMENT OF THE CASE AND FACTS

Respondent agrees with State Farm's statement of the case and facts.

SUMMARY OF ARGUMENT

There are two attorney's fees awards which State Farm is asking this court to review. The Fourth District affirmed the first of the two awards under the doctrine of the law of the case. State Farm makes no argument as to the Fourth District's application of the law of the case as creating conflict. Although the Fourth District did not apply the law of the case doctrine to the second attorney's fee award, it should have done so because this court previously authorized it by remanding our motion for attorney's fees to the trial court to decide both entitlement and amount (A 14). Review should therefore be denied.

ARGUMENT

ISSUE

THE OPINION OF THE FOURTH DISTRICT DOES NOT CREATE  
CONFLICT.

State Farm is seeking review of two awards of attorney's fees. The first fee award was pursuant to an order granting attorney's fees by the Fourth District Court of Appeal when it rendered the opinion in State Farm Fire & Cas. Co. v. Palma, 524 So.2d 1035 (Fla. 4th DCA 1988), aff'd, 555 So.2d 836 (Fla. 1990). At that time the Fourth District awarded Palma's counsel attorney's fees for services rendered on that appeal, remanding for the trial court to determine the amount. State Farm then sought review of that decision in this court. This court reviewed that decision on the merits and affirmed with opinion. State Farm Fire & Cas. Co. v. Palma, 555 So.2d 836 (Fla. 1990).

State Farm did not seek review in this court of the order of the Fourth District awarding attorney's fees and this court did not consider it. The insured's entitlement to attorney's fees at that point became the law of the case, and the Fourth District so held in its most recent opinion which State Farm is now asking this court to review. The Fourth District stated on page 2 of its opinion:

Initially, however, it is pertinent to observe that insofar as the award pertains to attorneys' fees for services rendered in this court upon the prior appeal, the issue of entitlement is no longer open to question but

constitutes the law of the case. This is true because in the earlier appeal we granted the motion for attorneys' fees, leaving open only the amount to be determined by the trial court. State Farm v. Palma, 16 FLW 1979 (Fla. 4th DCA July 31, 1991).

State Farm makes no argument to this court that the Fourth District created conflict when it affirmed the first attorney's fee award based on the law of the case, presumably because that doctrine is clearly applicable. Strazzulla v. Hendrick, 177 So.2d 1 (Fla. 1965); Tillman v. Smith, 560 So.2d 344 (Fla. 5th DCA 1990).

The second attorney's fee award which State Farm is asking this court to review was an award made by the trial court pursuant to this court's order of February 7, 1990, for services rendered when this court reviewed this case on the merits. State Farm Fire & Cas. Co. v. Palma, 555 So.2d 836 (Fla. 1990). That order provided:

Respondent's Motion for Attorney's Fees filed in the above styled cause by the attorney for Respondent is hereby remanded to the trial court for determination of the entitlement and amount of fees. (A 14)

By authorizing the trial court to determine entitlement to attorney's fees, this court established that Palma's counsel could recover attorney's fees. State Farm makes no argument that the trial court abused its discretion in awarding attorney's fees. State Farm's sole argument is that, as a matter of law, Palma's

counsel cannot recover attorney's fees. That argument is, of course, contrary to this court's order, quoted above, authorizing the trial court to determine both entitlement and amount. In Strazzulla v. Hendrick, 177 So.2d 1 (Fla. 1965), this court stated on page 2:

Early in the jurisprudence of this state it was established that all points of law adjudicated upon a former writ of error or appeal became "the law of the case" and that such points were "no longer open for discussion or consideration" in subsequent proceedings in the case. ...

State Farm should not now be entitled to re-litigate this court's authorization for recovery of attorney's fees, because that would also be contrary to the law of the case.

If there were ever a case in which attorney's fees should be awarded it is difficult to conceive of a case more appropriate than this one. As the history of this case shows, State Farm made an early decision to "go to the mat," State Farm Fire & Cas. Co. v. Palma, 524 So.2d 1035, 1036 (Fla. 4th DCA 1988), aff'd, 555 So.2d 836 (Fla. 1990). Once State Farm lost on the merits of coverage it went to the mat on attorney's fees. State Farm has already obtained review of attorney's fees, separate and apart from the issue of coverage, twice by the Fourth District, and once by this court. State Farm Fire & Cas. Co. v. Palma, 524 So.2d 1035, 1036 (Fla. 4th DCA 1988), aff'd, 555 So.2d 836 (Fla. 1990); State Farm Fire & Cas. Co. v. Palma, 555 So.2d 836 (Fla. 1990); State Farm

Fire & Cas. Co. v. Palma, 585 So.2d 329 (Fla. 4th DCA 1991).

Enough is enough.

CONCLUSION

Review should be denied.

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By: 

LARRY KLEIN  
Florida Bar No. 043381

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished, by  
mail, this 15<sup>th</sup> day of November, 1991, to:

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By: 

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