

IN THE THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA

CLINICA LA SALUD
a/a/o ALICIA BERNAL ALVAREZ,

Petitioner,

v.

INFINITY AUTO INSURANCE
COMPANY,

Respondent.

CASE No. 3D24-961

LT No. 17-17074

**PETITIONER'S
MOTION FOR ORDER DETERMINING ENTITLEMENT
TO APPELLATE ATTORNEY'S FEES**

Petitioner, CLINICA LA SALUD a/a/o ALICIA BERNAL ALVAREZ, pursuant to Fla. R. App. P. 9.400(b), respectfully moves the Court for an order determining its entitlement to appellate attorney's fees.

1. Petitioner petitions this Court for a writ of prohibition following the trial court's denial of a motion for disqualification.

2. The motion for disqualification was filed after the jury below entered verdict on behalf of the Respondent on the Petitioner's claim for breach of contract on alleged overdue personal injury protection (PIP)

benefits. The Petitioner has moved for a new trial and that motion still has not been adjudicated.

3. Entitlement to prevailing party attorney's fees in insurance cases, including appellate attorney's fees, is provided for by statute:

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

§ 627.428, Fla. Stat. (2021).

4. Upon that authority, the Petitioner is entitled to recover its appellate attorney's fees if it can secure a new trial below and secure rendition of judgment in its favor.

5. Accordingly, the Petitioner is requesting a conditional fee award in the event that it is successful in this appellate proceeding conditioned upon the Petitioner prevailing in the litigation below.

CONCLUSION

Petitioner, CLINICA LA SALUD a/a/o ALICIA BERNAL ALVAREZ,
respectfully moves the Court to enter an order determining its entitlement to
appellate attorney's fees.

Respectfully submitted,

Kenneth B. Schurr
Florida Bar No. 876100
LAW OFFICES OF KENNETH B.
SCHURR, P.A.
2030 S. Douglas Rd., Ste. 105
Coral Gables, Florida 33134
Telephone: (305) 441-9031
counselken@schurrlaw.com

By: /s/ Kenneth B. Schurr
 Kenneth B. Schurr

Elliot B. Kula
Florida Bar No. 003794
William D. Mueller
Florida Bar No. 120124
KULA & ASSOCIATES, P.A.
11900 Biscayne Blvd., Ste. 310
Miami, Florida 33181
Telephone: (305) 354-3858
eservice@kulalegal.com
elliott@kulalegal.com
william@kulalegal.com

By: /s/ Elliot B. Kula
 Elliot B. Kula

By: /s/ William D. Mueller
 William D. Mueller

