

SIXTH DISTRICT COURT OF APPEAL OF FLORIDA

SFR Services, LLC a/a/o John & Rose Zapisek v. Florida Department of Financial Services o/b/o Avatar Property and Casualty Insurance Company

Case No. 6D2023-1050 · No. 6D2023-1050 · Decided May 16, 2025

SUMMARY

The Florida Sixth District Court of Appeal held that the trial court incorrectly calculated the "judgment obtained" under Florida's offer-of-judgment statute by excluding the plaintiff's pre-offer taxable costs and attorney's fees. Applying the Florida Supreme Court's binding White formula, the court concluded that the insurer was not entitled to recover attorney's fees and costs because the judgment was not at least 25 percent less than the offer. The court reversed the fee judgment, dismissed part of the appeal, and remanded for further proceedings.

CASE DETAILS

COURT	Sixth District Court of Appeal of Florida
WRITING FOR THE COURT	Per curiam; Netcher, E.J., Associate Judge, authored a special concurrence; Traver, C.J.; Smith, J.; Netcher, E.J., Associate Judge
JURISDICTION	Florida Sixth District Court of Appeal
DECIDED	May 16, 2025
DOCKET	6D2023-1050
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	SFR appealed a final judgment awarding the insurer attorney's fees and costs under Florida's offer-of-judgment statute after the trial court determined that the plaintiff's judgment obtained was at least 25 percent less than the insurer's settlement offer.
STANDARD OF REVIEW	De novo review of the trial court's interpretation and application of the offer-of-judgment statute; entitlement to attorney's fees under the statute presents a question of law.
PRECEDENTIAL VALUE	Published Florida District Court of Appeal opinion; precedential

PARTIES

SFR Services, LLC a/a/o John & Rose Zapisek v. Florida Department of Financial Services o/b/o Avatar Property and Casualty Insurance Company

TOPICS

offer of judgment

attorney fees

costs

statutory interpretation

appellate procedure

PRACTICE AREAS

civil procedure

insurance

appellate procedure

attorney fees

statutory interpretation

QUESTIONS PRESENTED

1. Whether the trial court correctly calculated the plaintiff's judgment obtained under section 768.79, Florida Statutes, by excluding pre-offer attorney's fees and taxable costs.
2. Whether the insurer was entitled to recover attorney's fees and costs under the offer-of-judgment statute based on the \$15,000 proposal and the plaintiff's \$9,000 damages judgment.
3. Whether the appeal concerning SFR's fee-entitlement motion and individual costs awards remained justiciable after Avatar became insolvent and was placed into receivership.

HOLDINGS

1. Under the binding construction adopted in *White v. Steak & Ale of Florida, Inc.*, the judgment obtained includes the net judgment for damages plus attorney's fees and taxable costs that could have been included in a final judgment if judgment had been entered on the date of the offer.
2. The insurer was not entitled to attorney's fees and costs under section 768.79 because inclusion of SFR's pre-offer costs caused the judgment obtained to exceed the statutory threshold of \$11,250, or 75 percent of the \$15,000 offer.
3. The portion of the appeal challenging SFR's fee-entitlement motion was dismissed, and the dispute concerning individual costs awarded to the insurer was moot in light of the reversal.

KEY QUOTATIONS

"The judgment calculation that includes pre- offer attorney's fees and costs as of the date of the offer has become known as the White formula." (at 5)

"Thus, the trial court erred in failing to apply White's formulation of the "judgment obtained."" (at 6)

"Applying White, the insurance company was not entitled to an award of attorney's fees and costs under the offer of judgment statute." (at 6)

FACTUAL BACKGROUND

Following Hurricane Irma, SFR Services performed repairs for John and Rose Zapisek in exchange for an assignment of insurance benefits. SFR sued Avatar Property and Casualty Insurance Company for payment of its

invoices and sought damages, interest, costs, and attorney's fees. Avatar served a \$15,000 proposal for settlement expressly excluding taxable costs and attorney's fees, which SFR rejected. After trial and reduction of the jury's damages award, the trial court entered a \$9,000 damages judgment and awarded Avatar substantial post-offer attorney's fees and costs.

PROCEDURAL HISTORY

SFR sued to recover insurance benefits assigned by homeowners after Hurricane Irma. A jury found \$20,000 in damages, which the trial court reduced to \$9,000. The trial court then concluded that the \$9,000 damages award constituted the judgment obtained for purposes of section 768.79 and awarded the insurer \$60,936.50 in attorney's fees, \$38,599.07 in costs, and \$4,800 in expert costs, offset by the \$9,000 damages award. SFR appealed; the Sixth District reversed the fee-and-cost judgment in part, dismissed part of the appeal as moot or unavailable, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Enter a judgment in favor of SFR consistent with the reversal of the insurer's statutory fee-and-cost award and conduct further proceedings consistent with the opinion. The trial court may address any properly supported request by SFR for attorney's fees or costs against FIGA. The opinion leaves that issue to the trial court.

CASES CITED

- White v. Steak & Ale of Fla., Inc., 816 So. 2d 546, 551 (Fla. 2002)
- CCM Condo. Ass'n v. Petri Positive Pest Control, Inc., 330 So. 3d 1, 6 (Fla. 2021)
- Ham v. Portfolio Recovery Assocs., LLC, 308 So. 3d 942, 946 (Fla. 2020)
- Golf Scoring Sys. Unlimited, Inc. v. Remedio, 877 So. 2d 827, 829 (Fla. 4th DCA 2004)
- Finkelstein v. N. Broward Hosp. Dist., 484 So. 2d 1241, 1243 (Fla. 1986)
- Williams v. Brochu, 578 So. 2d 491, 493 (Fla. 5th DCA 1991)
- Mincin v. Short, 662 So. 2d 1323, 1325 (Fla. 2d DCA 1995)
- Danis Indus. Corp. v. Ground Improvement Techs., Inc., 645 So. 2d 420, 421-22 (Fla. 1994)
- Louisville & N.R. Co. v. Sutton, 44 So. 946, 948 (Fla. 1907)

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