

# Third District Court of Appeal

State of Florida, January Term, A.D. 2009

Opinion filed January 28, 2009.

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No. 3D08-2867

Lower Tribunal Nos. 06-221, 06-427, 04-2495

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**United Automobile Insurance Company,**  
Petitioner,

vs.

**Professional Medical Group, Inc., a/a/o Raquel Gutierrez,**  
Respondent.

A Writ of Certiorari to the Circuit Court for Miami-Dade County, Margarita Esquiroz, Gisela Cardonne Ely, and Maxine Cohen Lando, Judges.

Michael J. Neimand, for petitioner.

Jose R. Iglesia; Armando Brana, for respondent.

## CONFESSION OF ERROR

Before COPE, RAMIREZ, and SALTER, JJ.

PER CURIAM.

Based on respondent Professional Medical Group, Inc., a/a/o Raquel Gutierrez's confession of error, we grant petitioner United Automobile Insurance Company's Petition for Writ of Certiorari. Respondent agrees with petitioner that

the Eleventh Judicial Circuit Court, acting in its appellate capacity, departed from the essential requirements of the law when it awarded respondent appellate attorney's fees and costs. The respondent was not the prevailing party in the trial court. Pursuant to Brass & Singer, P.A. v. United Automobile Insurance Company, 944 So. 2d 252 (Fla. 2006), an appellate court cannot award appellate attorney's fees to an insured unless the insured prevails on appeal.

Therefore, we conclude that the appellate division of the circuit court departed from the essential requirements of law in this case in granting the fees and costs to respondent. We thus grant the petition and quash the order granting these conditional fees and costs to respondent.